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UNITED STATES DISTRICT COURT

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WESTERN DISTRICT OF NEW YORK

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 MOOG INC.,) 22-CV-187
 Plaintiff)

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vs.

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SKYRYSE, INC., et al) Buffalo, New York
 Defendant.) November 10, 2022
 3:00 p.m.

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ORAL ARGUMENT

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Proceeding held via Zoom for Government Platform
All parties appeared remotely.

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TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE JEREMIAH J. MCCARTHY
 UNITED STATES MAGISTRATE JUDGE

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FOR PLAINTIFF: SHEPPHARD MULLIN RICHETER & HAMPTON, LLP
 BY: RENA ANDOH, ESQ.
 TRAVIS ANDERSON, ESQ.
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 JOSEPH LEE, ESQ.
 ARMAN ZAHOORY, ESQ.
 -and-
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FOR DEFENDANT
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2 P R O C E E D I N G

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14:29:34 5 MAGISTRATE JUDGE MCCARTHY: Good afternoon,
14:29:34 6 everyone.

14:29:38 7 MR. GROSS: Good afternoon.

14:29:39 8 MS. ANDOH: Good afternoon.

14:29:46 9 MAGISTRATE JUDGE MCCARTHY: Okay. I count
14:29:48 10 -- okay. It looks like the gang is all here.

14:29:51 11 Eric, you want to call the case.

14:29:53 12 THE CLERK: Yes, Judge. We're in on the
14:29:56 13 record in case No. 22-CV-187, Moog Inc v. Skyryse, Inc.,
14:30:41 14 et. Al for a continuation of discovery hearings slash
14:30:46 15 oral argument.

14:30:47 16 Appearances by video are Rena Andoh, Kazim
14:30:54 17 Naqvi, Travis Anderson for Plaintiff; Gabriel Gross,
14:30:54 18 Joseph Lee, Arman Zahoory and Terrance Flynn for
14:31:03 19 Defendants Skyryse; Alex Truitt, Anthony Green and
14:31:08 20 Annabel Mireles for the individual Defendants.

14:31:09 21 The Honorable Jeremiah J. McCarthy
14:31:14 22 presiding.

14:31:14 23 MAGISTRATE JUDGE MCCARTHY: Good afternoon.
14:31:16 24 Yeah, I guess it's good afternoon for everybody now,
14:31:20 25 even those of you in San Francisco, right?

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14:31:22 2 MR. GROSS: It is.

14:31:22 3 MAGISTRATE JUDGE MCCARTHY: Afternoon all.

14:31:26 4 All right. I have received and reviewed the November
14:31:28 5 7th letters from Rena Andoh and Gabe Gross, and, I mean,
14:31:36 6 in addition to everything else that is already on file.
14:31:39 7 I've also briefly reviewed the motion for clarification,
14:31:45 8 Moog's motion, which is docket No. 283, as to which no
14:31:51 9 briefing schedule has been filed yet, so why don't we
14:31:55 10 start out with the letters, and I appreciate the fact
14:32:02 11 that, based on your meetings and discussions among the
14:32:07 12 parties since our last get together, that you have
14:32:10 13 resolved some of the issues. So, I applaud you for your
14:32:15 14 progress in that regard.

14:32:17 15 Oh, by the way, just a point of information,
14:32:20 16 and you all may have already heard this, I spoke to
14:32:25 17 Judge Vilardo's law clerk, Will Hayes, and, apparently,
14:32:29 18 the argument on the jurisdictional or venue issues is
14:32:34 19 going to be scheduled in a couple of weeks.

14:32:37 20 Is that everybody's understanding?

14:32:41 21 MR. GROSS: Yes, your Honor. I think the
14:32:43 22 parties and Chambers were just working on exactly which
14:32:46 23 date, probably the 29th or 30th, if I recall.

14:32:49 24 MAGISTRATE JUDGE MCCARTHY: Okay. Okay.

14:32:52 25 Well, that's obviously not in my bailiwick, so I'm going

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14:32:58 2 to proceed on the assumption that we are remaining here,
14:33:04 3 at least for the present time. And if he takes a
14:33:07 4 different view, then so be it.

14:33:09 5 Okay. I understand from the letters that
14:33:12 6 you have resolved the issue of the volume of shadow
14:33:20 7 copies, correct?

14:33:20 8 MR. GROSS: That's correct, your Honor.

14:33:21 9 MAGISTRATE JUDGE MCCARTHY: Okay. All
14:33:23 10 right. So let's talk about the production of Skyryse
14:33:35 11 laptops and the USB drives. I understand that Moog took
14:33:39 12 up my suggestion to pick out three laptops, and I've
14:33:48 13 reviewed the letters with respect to the party's
14:33:52 14 positions on that, so, I'll hear from whoever wants to
14:33:56 15 be heard, I guess, Moog first.

14:34:04 16 MR. NAQVI: Thank you, your Honor. I'll be
14:34:07 17 arguing on behalf of Moog.

14:34:09 18 MAGISTRATE JUDGE MCCARTHY: Okay.

14:34:11 19 MR. NAQVI: So, your Honor, I think it's
14:34:13 20 important to take a step back and just set the table of
14:34:39 21 how we got to this dispute in the first place. As your
14:34:43 22 Honor knows, Moog filed this lawsuit because of the
14:34:47 23 massive theft of data that has occurred. The theft
14:34:50 24 itself is not disputed, and Moog wants its data back.
14:34:55 25 And pursuant to the March 11th order, Skyryse agreed to

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return to Moog all of its non-public information. In late April, with Skyryse's prior counsel, they disclosed to the Court that Moog data had, in fact, been located on Skyryse's systems. And that potential relevant information has been deleted. And we also know that Skyryse placed a number of employees on leave, and, eventually, terminated some of them. And all three of the custodians for the three laptops that Moog is seeking the production of, were placed on leave. So, that is the background that we're dealing with, and I think it's important to know that. While this is a discovery issue, this also deals with compliance with the March 11th order and the return of Moog's data, which Skyryse stipulated to. So, at the last hearing we had, we heard Mr. Gross say over and over again that Moog is conducting a fishing expedition and has not made a showing of relevance regarding laptops. Mr. Gross said, quote, "they are not telling you that the laptops do have Moog data on it. This is speculation that they do. We have no reason to think that the laptops are laden with Moog data. If they have specific discovery that is based on fact, that would be different, but we don't."

And so, from Moog's perspective, it already

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14:37:23 2 had made a factual showing of relevance based on
14:37:27 3 Skyryse's own May 4th letter. But at the last hearing,
14:37:31 4 Skyryse essentially challenged Moog to show that there
14:37:35 5 were Moog data on these computers.

14:37:37 6 MAGISTRATE JUDGE MCCARTHY: Mr. Naqvi, Mr.
14:37:39 7 Naqvi, just a second because you were partially frozen,
14:37:45 8 I think. Now I can see you moving.

14:37:47 9 Okay. Just repeat the last couple of
14:37:50 10 sentences, if you would.

14:37:54 11 MR. NAQVI: I apologize, your Honor. I'm
14:37:55 12 having computer issues, I'm dialling in on my phone. I
14:37:59 13 hope there is no more technical issues.

14:38:02 14 What I was saying is at the last hearing,
14:38:05 15 Skyryse challenged Moog to show that there was Moog data
14:38:08 16 on these computers. That challenge was accepted. And
14:38:12 17 Moog, as you've seen in the papers, has provided "the
14:38:34 18 discovery that is based on in fact" that Mr. Gross was
14:39:30 19 asking for at the last hearing. As your Honor can see
14:39:33 20 in our letter, we provided specific examples of Mr.
14:39:37 21 Chung, Mr. Achar and Mr. Dao using Skyryse's e-mail
14:39:42 22 accounts and laptops to send and receive Moog
14:39:45 23 information. For Mr. Achar, we discovered that he was
14:39:48 24 copied on at least three e-mails with Mr. Pilkington
14:39:52 25 with Moog documents as attachments. For Mr. Chung, we

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14:39:55 2 discover that he created at least 255 spreadsheets while
14:39:59 3 at Moog, and tried to repurpose them for Skyryse use.
14:40:03 4 For Mr. Dao, we discovered that he exchanged at least
14:40:06 5 one e-mail with Alex Wang that contained Moog data. And
14:40:11 6 as a reminder to the Court, Alex Wang is the individual
14:40:15 7 that Skyryse identified as deleting potentially relevant
14:40:20 8 evidence in this case. So, there can be now no dispute
14:40:23 9 that each of these three individuals used their Skyryse
14:41:48 10 e-mail accounts and laptops to send and receive Moog
14:41:52 11 information. And with this additional evidence that we
14:41:55 12 provided, instead of backtracking, Skyryse is doubling
14:41:59 13 down. They previously said these laptops don't have
14:42:02 14 Moog data, and now they are claiming that Moog just
14:42:05 15 identifying certain examples of files on these computers
14:42:09 16 is not enough to produce the computers wholesale.
14:42:13 17 Skyryse's position appears to be that because the
14:42:35 18 evidence shows that these individuals may not have
14:42:38 19 engaged in the same level of misappropriation as Kim and
14:43:10 20 Pilkington that their computers do not need to be
14:43:13 21 produced. But, your Honor, this is a trade secret
14:43:16 22 misappropriation case. If Moog can show that any of its
14:43:19 23 data or files has been misappropriated, then it is
14:43:22 24 entitled to investigate the devices that were involved.
14:43:25 25 I mean how many files do we need to prove that are on

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14:43:32 2 these computers, millions? That is not how this case
14:43:34 3 can work. And as I said before, this goes beyond the
14:43:38 4 discovery issues. This deals with compliance with the
14:43:40 5 March 11th order.

14:43:41 6 And I think there is one more very important
14:43:44 7 thing to point out. Skyryse's letter claims that, well,
14:43:58 8 Moog already has copies of the documents that it
14:44:00 9 identified in its letter, so it doesn't need the
14:44:03 10 computers. And this shows that Skyryse's searches for
14:44:07 11 Moog data are working. But that is completely false.
14:44:10 12 Moog only discovered the documents that it submitted,
14:44:13 13 that it identified in its letter, by reviewing Kim and
14:44:18 14 Pilkington's files. So, this is a very indirect purview
14:44:21 15 that Moog has. If Kim and Pilkington did not e-mail
14:44:25 16 Moog documents to these three individuals, we would not
14:44:28 17 be able to discover it. So, there is no telling what
14:44:32 18 other Moog data resides on these computers that were not
14:44:35 19 directly sent by Kim and Pilkington via e-mail. And
14:44:39 20 because of this, Moog has concerns that Skyryse's search
14:44:44 21 and turn over of Moog data pursuant to the March 11th
14:45:08 22 order may not have been complete. And we are
14:45:10 23 discovering evidence that it likely was not complete.
14:45:13 24 And so it's not proper for Skyryse to say at the last
14:45:17 25 hearing, well, your Honor, this is a fishing expedition,

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14:45:21 2 Moog cannot identify any data on these computer. And
14:45:26 3 when Moog does that exact same thing, Skyryse says,
14:45:32 4 well, Moog already has the files, so they don't need the
14:46:23 5 computers. But that is not how this case works and that
14:46:27 6 is not how trade secret cases work. We already have a
14:46:30 7 stipulated order that devices containing Moog
14:46:33 8 information must be returned. And we're discovering
14:46:36 9 evidence that there are some inconsistencies with
14:46:39 10 Skyryse's compliance with that order.

14:46:42 11 So, now let's talk about Skyryse's proposal.
14:46:45 12 Skyryse's proposal is that, instead of producing these
14:46:48 13 three laptops, Moog should just review the file listings
14:46:52 14 for them, identify any potentially relevant files, and
14:46:55 15 then Moog can request a production of those files from
14:47:02 16 Skyryse. There are two big problems with that proposal,
14:47:37 17 your Honor.

14:47:38 18 First, file listings prevent Moog from
14:47:41 19 accessing critical forensic information on the
14:47:45 20 computers. The file listings do not allow Moog to
14:47:48 21 understand if and when any data was deleted. And of
14:47:51 22 course file listing will only show what files are
14:47:54 23 currently on that computer. Only the computers
14:47:57 24 themselves will allow Moog to investigate the deletion
14:48:00 25 of any files. As your Honor knows, there have been

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multiple instances of deletions of information by multiple Skyryse's employees. So the computers at issue exchanged Moog data with the very people who deleted Moog data. And so Moog needs to be able to fully investigate this.

Second, file listings do not allow Moog to understand when certain documents were created, who created them, when they were transferred or who they were transferred to. It would only, again, provide the name of the file, but that would not allow Moog to do a full investigation.

The third problem with the file listing is that it only gives Moog a surface level insight as to the actual files. For example, files could have been renamed or repurposed, and Moog would not have any way of knowing whether they contain Moog data or not without looking at the files. And we saw this very thing happen with Eric Chung. He took Moog spreadsheets and repurposed them for Skyryse purposes. So, if these files were completely renamed to language or terms that Moog doesn't use, it wouldn't be able to understand the relevance of those files. And the more practical issue, your Honor, with Skyryse's proposal is that it's going to create additional and unnecessary delay. This Court

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15:04:08 2 has stated that it wants the trade secret identification
15:04:11 3 process to move forward, so does Moog. But what is
15:04:15 4 going to happen under Skyryse's proposal is that Moog
15:04:18 5 would review the file listings and request the
15:04:21 6 production of certain files. And given the history in
15:04:24 7 this case, Skyryse would likely object, the parties
15:04:30 8 would have to meet and confer, and there would likely be
15:04:36 9 substantial additional motion practice to get these
15:04:40 10 issues resolved. And so that is additional months of
15:04:43 11 delay before the trade secret identification can
15:04:46 12 proceed. And Moog, just like the Court, wants to
15:04:49 13 identify its trade secrets after getting access to the
15:04:52 14 information it needs.

15:04:53 15 And, your Honor, I'll just end with a
15:04:55 16 discussion of Skyryse's legal authority. Skyryse cited
15:04:58 17 a number of cases in their letter that are completely
15:05:02 18 off point. And I'm happy to discuss any of those cases
15:05:06 19 in particular if your Honor has any questions, but I'll
15:05:09 20 speak to some of them generally. Skyryse cited to cases
15:05:42 21 that do not involve misappropriation of trade secrets,
15:05:46 22 the deletion of data, or other forensic information
15:05:49 23 necessary to this case. They did not cite to cases that
15:05:53 24 involved a stipulated order where devices and the return
15:05:57 25 of the Plaintiff's information was already agreed to.

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Many of the cases that Skyryse cite, involved the production of personal laptops or personal cell phones. And the Courts in those cases had privacy concerns because those are personal devices. Your Honor, here we're dealing with Skyryse issued laptops, these are work laptops. And many of the cases that Skyryse cites involves courts determining that, you know, you can't just get production of a computer or an image of a computer just because you want to search for documents. But these same courts hold that imaging of electronic devices is justified where there are "discrepancies or inconsistencies" in the opposing party's production. That is exactly what we have here. We have demonstrated discrepancies and inconsistencies in Skyryse's positions and their purported compliance with the March 11th order.

And I will just address one case because this is the main case that Skyryse cites. It's *Calyon v. Mizuho*. And in that case, the Court dealt with the imaging of personal computers and personal devices. And the Court had privacy concerns because those were personal devices. We don't have that issue for this dispute. And, here, the protective order and inspection protocol provide detailed protection for the production

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15:10:05 2 or excision for Moog's information. And, your Honor, I
15:10:09 3 want to point out one thing, the a *Calyon* case actually
15:10:14 4 supports Moog's position. The Court in that case held
15:10:26 5 that, "In cases where a Defendant allegedly used a
15:10:37 6 computer itself to commit the wrong that is the subject
15:10:39 7 of the lawsuit, certain items on the hard drives may be
15:10:43 8 discoverable and that allegations that a Defendant
15:10:46 9 downloaded trade secrets onto a computer provide a
15:10:49 10 sufficient nexus between Plaintiff's claims and the need
15:10:52 11 to obtain a mirror image of the computer's hard drive."
15:10:58 12 So, *Calyon* is exactly on point. It identifies certain
15:11:02 13 scenarios where getting access to an image or a computer
15:11:06 14 itself is appropriate in a trade secret case such as
15:11:09 15 this one. So, I'm happy to discuss this case or the
15:11:15 16 optics in more detail, I just want to let the Court know
15:11:18 17 that the cases that Skyryse cite are not applicable to
15:11:21 18 the facts in this case.

15:11:22 19 MAGISTRATE JUDGE MCCARTHY: Okay. Thank
15:11:23 20 you. Who wants to speak on behalf of Skyryse?

15:11:26 21 MR. GROSS: Thank you, your Honor. That's
15:11:28 22 me, Gabe Gross, speaking --

15:11:29 23 MAGISTRATE JUDGE MCCARTHY: Gabe.

15:11:30 24 MR. GROSS: -- for Skyryse. Relevance and
15:11:35 25 proportionality are sort of the hallmarks under Rule 26

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15:11:38 2 for discoverability. So let's keep in mind where we are
15:11:41 3 in the discovery process here. Skyryse has already
15:11:44 4 provided two terabytes of data to Moog. We talked about
15:11:49 5 some metrics on trying to help conceptualize or image
15:11:56 6 conceptually just how much information that is. That is
15:12:00 7 equivalent to 150 million pages of text or data that
15:12:04 8 Skyryse has already provided. It's a significant amount
15:12:07 9 of discovery, to say the least. And what we're here
15:12:11 10 disputing now is just how much more Moog claims to need
15:12:15 11 from Skyryse before Moog identifies its own trade
15:12:19 12 secrets. So, we did have the discussion that Mr. Naqvi
15:12:22 13 referred to to talk about what facts it could point to
15:12:26 14 that could justify turning over entire machines
15:12:30 15 wholesale, entire laptops, USB drives, things like that
15:12:35 16 that in and of themselves contain hundreds of thousands,
15:12:38 17 possibly millions of millions of files. And so for
15:12:41 18 these three laptops, in particular, they pointed us to
15:12:44 19 the facts that Mr. Naqvi talked about. Let's take the
15:12:48 20 Skyryse issued laptop that was used by an employee named
15:12:54 21 Tri Dao, for example. We asked them to show us some
15:12:57 22 facts that could establish the relevance of this entire
15:13:00 23 laptop in discovery. And, your Honor, they pointed us
15:13:03 24 to one e-mail. One e-mail. That does not justify
15:13:10 25 wholesale indiscriminate discovery of an entire computer

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15:13:15 2 and all of its irrelevant contents. What they said
15:13:21 3 about the e-mail is that it has the word "Moog" in its
15:13:24 4 metadata, not in the contents, they didn't say it
15:13:27 5 contained a trade secret. They said the word "Moog"
15:13:30 6 showed up in metadata in an e-mail that was connected to
15:13:35 7 Mr. Dao, and now they are asking to you order broad
15:13:38 8 discovery into everything on his computer, all of the
15:13:41 9 hundreds of thousands of files. For Mr. Achar, it is a
15:13:45 10 similar story. They pointed us to three e-mails.
15:13:47 11 Again, they have the e-mails and they say the word
15:13:51 12 "Moog" ended up in the metadata in these e-mails. And
15:13:54 13 so they now want Mr. Achar's entire laptop. They are
15:13:59 14 not seeking targeted, focused, relevant discovery about
15:14:25 15 the e-mails that they are concerned about, which may be
15:14:28 16 a manageable universe. They are demanding
15:14:31 17 indiscriminate discovery of God knows how many files
15:14:36 18 simply because they argue that these people are relevant
15:14:38 19 and these particular e-mails, four in the interest of
15:14:42 20 those four custodians, are relevant. So, respectfully,
15:14:47 21 I would urge your Honor to find that pointing to an
15:14:50 22 e-mail is not justification for broad discovery of an
15:14:54 23 entire laptop. This stuff is preserved. This stuff is
15:14:58 24 secured. But discovery needs to be bounded by relevance
15:15:03 25 of proportionality on top of the two terabytes of data

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15:15:07 2 they already have.

15:15:08 3 And Mr. Naqvi ended his presentation with
15:15:11 4 the discussion of all of the cases that we cite, and
15:15:13 5 there are seven or eight, including district courts here
15:15:17 6 in New York, that, your Honor, we've explained to the
15:15:19 7 Court in the briefing that I won't repeat, but these
15:15:22 8 courts have consistently limited discovery based on some
15:15:27 9 pretty simple principles, which is just because a
15:15:32 10 Plaintiff wants to search to see if relevant data
15:15:37 11 exists, that doesn't, pardon me, that doesn't justify
15:15:41 12 indiscriminate discovery into entire machines,
15:15:45 13 especially where the Plaintiff appears to have the
15:15:48 14 documents at issue. And there is no indication from the
15:15:50 15 producing party that it's blocking or stymieing
15:15:54 16 discovery about those particular topics. So, Mr. Naqvi
15:15:58 17 explained that, from his perspective, they think they've
15:16:01 18 made their showing of relevance, your Honor. And they
15:16:06 19 may have done that with respect to those four e-mails,
15:16:08 20 they certainly have not done that with respect to the
15:16:11 21 contents of an entire device.

15:16:13 22 I mentioned Mr. Achar and Mr. Dao's laptops,
15:16:16 23 but I would like to take a moment to talk about Mr.
15:16:19 24 Chung's. And what Moog put in its statement to the
15:16:22 25 Court I think was pretty interesting. And what they

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15:16:25 2 claimed was that they are aware of 255 files that Mr.
15:16:30 3 Chung made while he was at Moog. He did work at Moog
15:16:35 4 before he worked at Skyrise. They are aware of files
15:16:38 5 that he made while he was at Moog. That is their words,
15:16:41 6 "while he was at Moog." And they found them, according
15:16:44 7 to Moog, in Kim and Pilkington's data sets. Not in
15:16:50 8 Chung's, but in Kim and Pilkington's. And rather than
15:16:54 9 seeking discovery into those files, they are asking for
15:16:57 10 his entire laptop. And they even, they even say, your
15:17:01 11 Honor, something, I need to correct the record on,
15:17:04 12 because it's false, they try and cast Mr. Chung as
15:17:06 13 having been terminated because he engaged in some
15:17:10 14 nefarious activity. They've actually said on page 3 of
15:17:14 15 their letter at docket No. 282, that "he was later
15:17:17 16 terminated from Skyrise because Skyrise admits that
15:17:22 17 Chung used one of Mr. Pilkington's devices." Your
15:17:26 18 Honor, that is just false. They know that, and they
15:17:30 19 know that because we've kept Moog's counsel apprised of
15:17:34 20 our investigation along the way. On June 21st -- June
15:17:38 21 24th, we learned that Mr. Chung had resigned, it was
15:17:43 22 effective that day. I wrote Ms. Andoh a letter and
15:17:46 23 updated her on that fact. He resigned. He wasn't
15:17:49 24 terminated because of engaging in some conduct with Mr.
15:17:52 25 Pilkington. So, you know, the picture that Moog's

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15:17:56 2 counsel are painting in their letter and through their
15:17:59 3 argument is not entirely accurate, your Honor, and they
15:18:03 4 haven't made any showing of the relevance of the entire
15:18:06 5 contents of these devices, but that is what they are
15:18:10 6 asking for. So, Skyryse has done anything but stand in
15:18:14 7 the way of proportionate, relevant discovery. We
15:18:18 8 understand they are interested in files that might have
15:18:21 9 been in the custody of these three employees. We have
15:18:24 10 their laptops image. We explained how they haven't come
15:18:28 11 close to showing the relevance of the entire contents of
15:18:32 12 these laptops, but we've got them preserved and we said,
15:18:35 13 look, we'll show you the listing of the files if there
15:18:39 14 is something in there that you can say is relevant. For
15:19:18 15 example, if they can see the 255 Excel files that they
15:19:23 16 say Mr. Chung made on his Moog on his laptop, we will
15:20:29 17 turn them over, no problem, we will turn them over. If
15:20:38 18 these e-mails that we're hearing about in the letter,
15:20:40 19 we'll turn them over. And if they have other things
15:20:43 20 that they can show are relevant, we're more than willing
15:20:46 21 to have the discussion with them and provide the
15:20:48 22 relevant files. But that is what discovery is about,
15:20:52 23 relevant, proportionate discovery of information that
15:20:56 24 actually relates to the issues in the case, the claims
15:20:57 25 and defenses, not Dao and Achar's calendar entries and

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and personal photos and whatever else might be on these laptops, not to mention all of their confidential, propriety unrelated work at Skyryse. The vast majority of these laptops will not be relevant to this lawsuit, but that is exactly what Moog continues to demand through this discovery request.

So, respectfully, we think if there is more discovery to be had so they can identify their own trade secrets, which we think they can do that right now, but if there is more, let's do it in a step-like fashion and let's focus on what is relevant and proportional. We'll show them the file files and we'll tell them what is relevant and we will turn them over and they'll have more information in the two terabytes, the mountain of data that they are sitting on. But this idea that they made a satisfactory showing of relevance and entire contents of the laptops is just wrong. They haven't. They haven't addressed the entire contents. They addressed the factual matter they are interested in and shown the relevance of the three, four e-mails and some of Mr. Chung's work, if it's even on his laptop, they only said they identified it in Kim and Pilkington's laptops. I think there is a path forward here, but, respectfully, it needs to focus on relevant information,

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relevant discovery, without putting the undue burden on Skyryse without having to look at the entire contents of whole computers and review them for privilege and expose the sensitive, confidentially sensitive, propriety, confidential and irrelevant data that is on the laptops that is not going to move the needle on the case one way or the other in this case. So I think I'll rest there on the three laptops. And we've got some other comments, but I think that is the gist of it from Skyryse's perspective on those three laptops. Thank you, your Honor.

MAGISTRATE JUDGE MCCARTHY: Mr. Gross, could you, and I know you've already said it once, but for my benefit, could you explain what your proposal would be relative to these three laptops. If I understand correctly, I think it's the same proposal as to the other laptops that Moog has not designated. Is that right?

MR. GROSS: Yes, your Honor. I think I can answer that, your Honor. What our proposal is that one it was, yes, thank you for focusing on three instead of nine laptops. If those are the three you're interested in, here is what we're willing to do to move this forward. We'll give you the complete list of every file

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15:23:36 2 on those three laptops, so you have the time to look at
15:23:40 3 it and come back to us and tell us what you think might
15:23:43 4 actually be relevant to the lawsuit. And I think that
15:23:45 5 does everyone a favor. They can look at the calendar
15:23:50 6 entries and all the types of things we know won't have
15:23:52 7 anything to do with the lawsuit, and they can focus on
15:23:55 8 the things that we think will be relevant to the claims
15:23:58 9 in the case and we can move forward in that way. With
15:24:02 10 respect to the other laptops, if I understand Moog's
15:24:04 11 position right now, there are five or six others, they
15:24:07 12 want the file listing of those, too, and they haven't
15:24:09 13 made any showing of relevance for that. With respect to
15:24:13 14 the laptops, our position is let's go in step-wise
15:24:16 15 fashion for the three they are interested in to help
15:24:19 16 them focus on what they think is relevant and what would
15:24:22 17 help them make their trade secrets. And as for the
15:24:25 18 other laptops, they made no showing of relevance on, and
15:24:26 19 so while they are preserved and they are not going to go
15:24:28 20 away, we don't see any discovery to those laptops being
15:24:32 21 necessary or appropriate right now.

15:24:33 22 MAGISTRATE JUDGE MCCARTHY: Okay. Mr.
15:24:35 23 Naqvi, any brief response on that?

15:24:38 24 MR. NAQVI: Yes. I'll just give a few brief
15:24:42 25 responses. Your Honor, Mr. Gabe, or, excuse me, Mr.

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15:24:45 2 Gross focused on the fact that we identified a couple of
15:24:49 3 handful of e-mails and we haven't demonstrated relevance
15:24:53 4 for the entire laptop. Your Honor, we're being
15:24:58 5 prevented from doing that. Again, we were only able to
15:24:59 6 identify files that they sent and received from
15:25:02 7 Pilkington and Kim. We have to use an indirect route to
15:25:05 8 identify relevant files in the computers because, of
15:25:08 9 course, we haven't had access to them. They haven't
15:25:12 10 produced Mr. Achar or Mr. Chung or Mr. Dao's e-mail
15:25:16 11 files. We haven't been able to find them. We've been
15:25:19 12 able to make a factual showing of relevance based on the
15:25:23 13 limited information we do have. And this is a trade
15:25:27 14 secret misappropriation case. This is not a normal
15:25:28 15 case. This case inherently involves forensic issues.
15:25:32 16 And, as I said before, a file listing ties one hand
15:25:36 17 behind Moog's back in doing its forensic investigation.
15:25:39 18 Your Honor has already seen there has been a deletion of
15:25:42 19 data. We need to be able to investigate that. That is
15:25:49 20 exactly why, pursuant to the March 11th order, Skyryse
15:25:55 21 agreed to turn over to the Moog all of its non-public
15:26:00 22 information. And to the extent any Moog information was
15:26:04 23 mixed with Skyryse information, it would be produced to
15:26:07 24 IDS. That is why there has been dozen of devices that
15:26:10 25 have been produced to IDS. So, this whole notion that

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15:26:14 2 we need to demonstrate that every file on the laptop or
15:26:17 3 the vast majority of the files on the laptops is
15:26:22 4 relevant, it is just not congruent on how discovery has
15:26:24 5 proceeded in this case. If there are relevant files,
15:26:25 6 that needs to be turned over. If the devices contain
15:26:32 7 Skyryse's information, they need to be imaged and sent
15:26:36 8 to IDS. The vast majority of the data within IDS does
15:26:44 9 not necessarily relate to this case. But that has been
15:26:47 10 the most efficient way to cut through discovery.

15:26:50 11 And, your Honor, I'm just going to close
15:26:52 12 with the notion that this is the most efficient way for
15:26:56 13 us to proceed by us reviewing file listings, I
15:27:00 14 completely disagree with that. We're going to have more
15:27:03 15 disagreements on the files, and we are going to have
15:27:04 16 more motion practice about us moving to compel the
15:27:07 17 production of files and Skyryse resisting that. And the
15:27:07 18 best way to cut through this is for us to get access to
15:27:17 19 three laptops, which we have already shown contain Moog
15:27:17 20 data. That is the beginning and end of the
15:27:19 21 conversation. If they contain Moog data, is there a
15:27:22 22 deletion of data, where did it go, who created it. And
15:27:25 23 we can't do that with just file listings.

15:27:28 24 So, I'm going to end my comments on the
15:27:32 25 three laptops and I'm sure your Honor will get to the

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15:27:35 2 other five in short order.

15:27:36 3 MR. GROSS: Your Honor, if I may just very
15:27:38 4 briefly before we move on.

15:27:39 5 MAGISTRATE JUDGE MCCARTHY: Yes.

15:27:39 6 MR. GROSS: You know, the parties stipulated
15:27:42 7 at the outset as to which devices in their entirety
15:27:46 8 would be imaged and turned over to IDS. That is done
15:27:49 9 and that is over. And Mr. Naqvi raises the prospect
15:27:54 10 that data was deleted. To the extent that happened,
15:27:59 11 either by Mr. Wang or Ms. Kim, their entire devices have
15:28:03 12 been turned over. There were times and situations in
15:28:06 13 which the imaging and production of entire devices was
15:28:09 14 something the parties agreed to or Skyryse did
15:28:11 15 voluntarily. That is not what we're talking about.
15:28:14 16 What we're talking about is what is left on the edges
15:28:17 17 after the two terabytes of data have been turned over
15:28:20 18 that Moog says it needs to identify its trade secrets.
15:28:24 19 They've identified three people, whose information or
15:28:26 20 whose documents they are interested in, but they haven't
15:28:28 21 made a showing as to why their entire computers are
15:28:31 22 required to be turned over. It would go far beyond
15:28:33 23 anything the parties stipulated to or agreed to earlier
15:28:36 24 as to that sort of wholesale discovery. I'll close
15:28:39 25 there. Thank you.

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15:28:39 2 MR. NAQVI: Your Honor, may I make one
15:28:41 3 brief, but I think very important clarification to what
15:28:44 4 Mr. Gross just said. The March 11th order did not say
15:28:49 5 which devices needed to be turned over. It says Skyrise
15:28:53 6 is required to return to Moog all non-public
15:28:57 7 information. If that non-public information necessarily
15:29:01 8 contained Skyrise information, that needed to go to IDS.
15:29:05 9 We have concerns that this process was not completely
15:29:08 10 complied with. And we're now finding files on other
15:29:11 11 people's computers that we have to find indirectly
15:29:14 12 through Kim and Pilkington's e-mails. How is Moog's
15:29:17 13 ability to search for relevant files as to Mr. Chow, Mr.
15:29:21 14 Dao or Mr. Chung, if we can't search for them, we've
15:29:26 15 only been able to search for custodians. And we found
15:29:31 16 we have a strong suspicion this is the tip of the
15:29:33 17 iceberg. If we found this amount of data through
15:29:37 18 inspecting other people's files, imagine how much Moog
15:29:41 19 data is on these computers by inspecting the computers
15:29:44 20 themselves. And we still have not heard from Mr. Gross
15:29:48 21 that these computers do not contain Moog data. He
15:29:50 22 obviously can't make that certification given the
15:29:53 23 evidence that has been presented.

15:29:53 24 MAGISTRATE JUDGE MCCARTHY: So, Mr. Naqvi,
15:29:55 25 what Moog is asking for is entire imaged versions of

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15:29:59 2 these three laptops be produced, correct?

15:30:04 3 MR. NAQVI: That's correct, your Honor.

15:30:05 4 MAGISTRATE JUDGE MCCARTHY: All right. I
15:30:06 5 know that Moog's initial request was for many more
15:30:12 6 laptops to be imaged and produced. It was my
15:30:16 7 suggestion, and, granted, I did say on October 20th that
15:30:22 8 it was just a suggestion, and I would consider things
15:30:26 9 further, but I continue to believe that a narrowing it
15:30:32 10 to three laptops is a reasonable accommodation and I
15:30:37 11 think that a sufficient showing has been made as to
15:30:39 12 these three laptops, mainly Achar, Chung and Dao, that
15:30:46 13 those imaged versions should be produced to Moog. So, I
15:30:51 14 will order that.

15:30:53 15 Now, let's move onto the issue of the other
15:30:56 16 laptops.

15:30:59 17 MR. NAQVI: Thank you, your Honor. I'll --
15:31:01 18 this is a much briefer issue, as your Honor may
15:31:04 19 appreciate it.

15:31:05 20 So, for these five other laptops that have
15:31:08 21 been imaged, but not yet been produced, Skyryse does not
15:31:12 22 agree to provide anything, and, instead, is saying, we
15:31:15 23 will provide a file listing for the USB device that
15:31:19 24 these laptops were connected to. And, Moog, you can
15:31:22 25 review the file listing for the USB device, but not the

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15:31:26 2 file listings for the laptops themselves. So, your
15:31:29 3 Honor, this is now the second hearing we've had
15:31:32 4 regarding these laptops. We still have not heard any
15:31:35 5 certification that these laptops do not contain Moog
15:31:38 6 data and that is striking. If they contain Moog data,
15:31:42 7 we need to be able to see what that is. And, again,
15:31:45 8 this goes back to Moog's efforts to get its data
15:31:50 9 returned to it. And this goes beyond a discovery issue,
15:31:52 10 this goes back to the March 11th order. For these five
15:31:54 11 laptops, Moog just wants the file listings so we can
15:31:59 12 determine to what extent these laptops have Moog data.
15:32:02 13 So Skyryse must certify that these laptops do not
15:32:05 14 contain Moog data or just turn over the file listings.
15:32:10 15 And the burden associated with turning over the file
15:32:13 16 listings is minimal. And so Skyryse's proposal is we
15:32:18 17 will review the listing for the USB and not the laptop
15:32:22 18 itself. There is a few problems with that. A file
15:32:26 19 listing for the USB device will only list the files
15:32:27 20 currently on that device. If there were Moog files that
15:32:29 21 previously existed on that USB device and were
15:32:30 22 transferred to any of the five laptops, but were later
15:32:33 23 deleted, again, we would be prevented from discovering
15:32:37 24 this information. For one of the laptops belonging to
15:32:39 25 custodian Mario Brenes, we did identify to Skyryse and

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to the Court at least two occasions where Defendant Missok Kim e-mailed Mr. Brenes Moog spreadsheets that were created any Eric Chung. And so it cannot be disputed that Moog data resided at least on this computer. And, again, this is based on Moog's indirect investigation from other custodians. So Skyryse continues to say, well, this USB device was used by its IT department to set up laptops, so it doesn't have anything on it. Again, after weeks of litigating and briefing this issue, Skyryse is not coming to the Court and your Honor and saying, "Your Honor, we certify as officers of the court that these five laptops do not contain Moog data," and the fact that they continue to not make that representation is very concerning to Moog. So, the fact that we're only asking for these file listings, we're not asking for these five laptops in order to strike a middle ground, as your Honor directed, the burden is minimal and a factual showing of relevance has been made, both from Skyryse's May 4th letter, and additional evidence that Moog has now provided to the Court.

And I'll address this one issue. This may be a housekeeping issue. But for the USB device, Skyryse did agree in its letter and in the meet and

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15:33:56 2 confer process to produce a complete file listing. That
15:33:59 3 doesn't seem to be in dispute. Moog also wants to
15:34:01 4 clarify for the record that it's also requesting all
15:34:04 5 connection logs. To the extent that is stored in a
15:34:07 6 different format, Moog also wants to get the file
15:34:10 7 listings and also the connection history for that USB
15:34:14 8 device so that we can understand exactly which devices
15:34:18 9 that USB device was connected to to allow Moog to do its
15:34:24 10 forensic investigation.

15:34:26 11 MAGISTRATE JUDGE MCCARTHY: Okay. Mr.
15:34:26 12 Gross.

15:34:27 13 MR. GROSS: Thank you, your Honor. Why
15:34:28 14 don't I start where Mr. Naqvi left off with the USB
15:34:32 15 devices. We did offer, as a compromise, to give them a
15:34:35 16 file listing of the USB we know the IT department used
15:34:39 17 to set up different employee's laptops. I think it's
15:34:43 18 far above any beyond they've shown any relevance to.
15:34:46 19 But we're willing to do it to get past this. Connection
15:34:47 20 logs are inappropriate. We know that the device was
15:34:52 21 used by the IT team to set up multiple laptops.
15:34:52 22 Connection logs that show every connection between that
15:35:00 23 device and every laptop, they've shown no relevance for.
15:35:03 24 We'll give them the file listings so that they can look
15:35:06 25 at them themselves, that is more than what they are

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entitled to. It is certainly more than what is relevant. And it is more than sufficient on the USB drive.

On the remaining laptops, they are asking again for an entirely asymmetric, disproportionate irrelevant set of data. They want file listings for five different laptops, and their only justification for it is what we just heard Mr. Naqvi say. One guy, Brenes, received some e-mail. The only discovery or offered any relevance showing for it is what e-mail Mr. Brenes received. That is what discovery should be focused on. They should not be entitled to fishing through calendar entries, irrelevant e-mails or other confidential entires stored on five different people's laptops just because they think there might be something interesting there. The cases that we've cited to your Honor establish very clearly that a Plaintiff's speculation and desire for more investigation is not an adequate grounds for discovery. They haven't made a showing of relevance. They haven't made a showing of proportionality. And they haven't made a showing that this is worth the burden that is continuing to reflect on my client, Skyryse, who is the only person producing more and more and more discovery. It's not going two

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15:36:27 2 ways. They haven't made a showing --

15:36:28 3 MAGISTRATE JUDGE MCCARTHY: Mr. Gross, let

15:36:30 4 me jump in to alleviate your concern because of the

15:36:34 5 stage we're at. Believe me, you are going to be

15:36:37 6 entitled to discovery down the road. My focus right

15:36:41 7 now, as I've said repeatedly, I want to get to a stage

15:36:47 8 where Moog has identified the trade secrets that it

15:36:51 9 claims to have been misappropriated and in a detailed

15:36:55 10 fashion pursuant to my July whatever it was, 20th, or

15:37:00 11 whatever Decision and Order. But, so you are going to

15:37:04 12 get discovery. You can rest assured. It is just a

15:37:08 13 question of what sequence we're going here.

15:37:11 14 How about Mr. Naqvi, and, Mr. Gross, I'm

15:37:15 15 directing this to you as well, I believe, you know, Moog

15:37:19 16 says in their papers, and I think Mr. Naqvi just said it

15:37:23 17 again, that, excuse me, this is specifically at page

15:37:26 18 five in their November 7th letter, that Skyryse has

15:37:31 19 never represented that the laptops do not contain any

15:37:35 20 Moog data. It seems to me, if you can make that

15:37:38 21 representation, then, and maybe you have, they are

15:37:41 22 saying you have not. Where does that leave us?

15:37:44 23 MR. GROSS: Sure. So, your Honor, I think

15:37:46 24 it's a little flip the way they phrased it. They

15:37:49 25 haven't told us what Moog data they are talking about.

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15:37:52 2 They haven't said any of the e-mails that they are
15:37:54 3 talking about contained Moog confidential information.
15:37:57 4 What we do know is that Moog data could be a reference
15:38:01 5 to "Moog" in a public document.

15:38:03 6 MAGISTRATE JUDGE MCCARTHY: The March 11th
15:38:05 7 order required you to turn -- return to Moog any
15:38:09 8 non-public Moog information. And so can -- are you able
15:38:14 9 to certify to them that these laptops do not contain
15:38:18 10 non-public Moog information.

15:38:21 11 MR. GROSS: Your Honor, I can certify that
15:38:23 12 Skyryse has done everything in its power to comply with
15:38:26 13 those orders and those stipulations. We have run
15:38:29 14 hundreds of thousands of search terms at Moog's
15:38:33 15 insistence across a massive amount of data to ensure
15:38:56 16 compliance with that order. I can't prove a negative to
15:38:58 17 your Honor right now and put it in the terms that Moog's
15:39:01 18 counsel would like, and say these laptops don't contain
15:39:05 19 anything related to Moog ever. What I can say is that
15:39:09 20 Skyryse, and its teams of lawyers, have taken every
15:39:13 21 reasonable step to ensure compliance with those orders.
15:39:16 22 Everything that we've found, we've turned over. So,
15:39:20 23 your Honor, all I can tell you is that we are in
15:39:23 24 substantial compliance with the order. Skyryse is in
15:39:26 25 substantial compliance with the order. We're not aware

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15:39:30 2 of violations of that order. And we've done anything we
15:39:34 3 can to get anything that hints of Moog out of the
15:39:35 4 company's system. Skyryse never wanted it. It never
15:39:40 5 wanted it. To get Moog it back. I can't prove the
15:39:43 6 negative, as Mr. Naqvi challenged me to do, I can say
15:39:48 7 that my client has done everything in its power to
15:39:51 8 comply with the order.

15:39:52 9 MAGISTRATE JUDGE MCCARTHY: What I'm going
15:39:54 10 to direct that as to the Brenes laptop, that you produce
15:39:58 11 the file listings for Moog. And then we'll see where we
15:40:04 12 go from there. And on the USB device, you're going to
15:40:10 13 produce a connection logs, is that right?

15:40:13 14 MR. GROSS: We've offered to produce the
15:40:15 15 file listings, your Honor. We thought the connection --

15:40:19 16 MAGISTRATE JUDGE MCCARTHY: File listing on
15:40:21 17 the USB device. Okay. And then depending on what is
15:40:25 18 shown or what is shown on the review of the mirror
15:40:29 19 images of the three laptops that I've already directed
15:40:31 20 you to produce, I may reconsider that ruling and extend
15:40:37 21 it as to other laptops. But for now we're going to
15:40:41 22 leave it at that.

15:40:43 23 MR. NAQVI: Your Honor, maybe, I appreciate
15:40:47 24 where your Honor is landing on this. I do just want to
15:40:49 25 discuss the connection log, because I do think that is

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important. And what Mr. Gross said or was not able to say, I think, remains very concerning to Moog. The standard is not substantial noncompliance. He cannot certify there is no Moog data on these computers. What we would ask is, in addition to the file logs, that we be, we get the connection log for that USB device. It can be limited in time from 2021 to present, but we need to be able to see which other devices this USB device was connected to. There is no risk of divulging confidential information by giving us the connection log. And I think that goes hand in hand with our ability to review the file. So what I ask is that in addition to the file listing, we also need the connection log. This is something that Skyrise can provide us and minimal burden and it still gives us limited information and it helps with our forensic information.

MR. GROSS: Your Honor, if I may, there still has been no showing that the device that the IT department has used is relevant. And there is certainly no showing that the connection logs of every device it has ever been connected to, that is just is irrelevant.

MAGISTRATE JUDGE MCCARTHY: Mr. Gross, I'll say in that regard, and I know I appreciate your

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15:42:10 2 position that it's impossible to prove a negative, and I
15:42:15 3 agree with that, but, I do think, and I also take you at
15:42:21 4 your word, I have no reason to doubt that you've made
15:42:25 5 great efforts to make sure that all non-public Moog
15:42:32 6 information of which Skyryse is aware has been returned.
15:42:36 7 Nonetheless, you can't, and I don't fault you for this,
15:42:40 8 but you can't make a categorical representation of that,
15:42:44 9 so I think on balance, and I don't -- I don't see a huge
15:42:49 10 burden or danger to producing the connection logs, so,
15:42:55 11 for the USB device, so I'll direct that be produced as
15:43:00 12 well. Okay.

15:43:00 13 Let's move onto the individual -- this is
15:43:08 14 the individual Defendant's excision of communications.
15:43:15 15 At our last conference, I had suggested that, maybe,
15:43:18 16 you, let's see, Moog, you wanted to from as far back as
15:43:22 17 2013 and I suggested 2016. And, so, that was only a
15:43:30 18 suggestion, but I will hear from whoever wants to be
15:43:33 19 heard in that regard.

15:43:40 20 MR. NAQVI: Your Honor, this is Kazim Naqvi
15:43:43 21 again. I'll be brief again. I think this is a briefer
16:32:53 22 issue.

16:32:53 23 As your Honor noted, you suggested 2016, we
16:32:56 24 think that is reasonable and proportional. And in
16:33:02 25 meeting and conferring, the individual Defendants

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16:33:05 2 rejected that position. They didn't provide any
16:33:09 3 tangible alternative proposal and their argument is
16:33:14 4 that, well, there is still such a large volume of
16:33:37 5 communications from 2016 to present, and the burden
16:34:32 6 associated with the file by file review is too much.
16:34:35 7 But there is legal and practical problems with that
16:34:38 8 position. A file-by-file review, this is a self imposed
16:34:43 9 and voluntary burden. There is absolutely no
16:34:46 10 requirement in any order or the federal rules that
16:34:49 11 requires a file-by-file privacy review. They do not
16:34:53 12 have to perform that privacy review. If that is
16:34:56 13 something they want to do, that is on them, but there is
16:35:04 14 no legally accepted burden because there is no legal
16:35:11 15 obligation that they must undertake. Practically, there
16:35:19 16 is no reason why a file-by-file review is required in
16:35:24 17 this case or needed. Even if there were private
16:35:47 18 communications on these devices, again, which no showing
16:35:50 19 has been made, they are all presumptively designated as
16:35:54 20 "highly confidential, attorney's eyes only." And so
16:36:01 21 they can only be disclosed to Moog's outside counsel and
16:36:08 22 experts. The individual Defendants have not identified
16:36:10 23 any real concern, any real problem with having these
16:36:15 24 theoretically private communications being disclosed
16:36:18 25 only to outside counsel or expert. No file-by-file

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16:36:21 2 review has taken place for any other devices, at least
16:36:28 3 from Moog's perspective, and turned over to IDS. And,
16:36:36 4 so, from our perspective, this is just a pretextual
16:36:42 5 argument that does not actually tie to any real burden
16:36:46 6 that is required to block Moog from discovery. And, so,
16:36:49 7 you know, we've already discussed how there is no court
16:36:52 8 order that allows excision based on relevance. And to
16:36:56 9 excise documents based on privacy, you have to
16:37:05 10 specifically identify them, similar to a privilege log.
16:37:08 11 And the individual Defendants have not done that. They
16:37:14 12 are, again, making a blanket claim over a large group of
16:37:18 13 communications without doing the work to specifically
16:37:22 14 identify anything private on them. We saw this same
16:37:25 15 tactic when clawing back documents under the Fifth
16:37:29 16 Amendment concern. So we're seeing the same exact
16:37:31 17 conduct occur here, but it's not tied to any valid
16:37:35 18 procedure, any court order or any other rule. So,
16:37:38 19 Moog's position is 2016 to present is reasonable. There
16:37:42 20 are no privacy concerns. And if there are privacy
16:37:45 21 concerns, it's adequately dealt with with the protective
16:38:00 22 order and the inspection protocols.

16:38:09 23 MAGISTRATE JUDGE MCCARTHY: All right.

16:38:09 24 Thank you.

16:38:11 25 Mr. Green or Mr. Truitt.

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16:38:16 2 MR. TRUITT: Your Honor, I will be speaking
16:38:17 3 today. So, I just wanted to talk about what has
16:38:20 4 happened since the last court conference. We performed
16:38:23 5 an analysis of all of the devices, and we uncovered that
16:38:28 6 there was approximately 560,000 communications from the
16:38:35 7 period of January 1st of 2016 to December 31st, of 2020.
16:38:46 8 The remaining, you know, going forward from December
16:38:50 9 31st of 2020, sorry, of 2021, all of those -- no, 2020,
16:38:55 10 all of those have already been produced already. So,
16:38:59 11 that is an immense number of communications. And in my
16:39:11 12 e-mail to Kazim, which I believe is exhibit D to his
16:52:26 13 letter to the Court, it sort of sets out our position.
16:52:29 14 And, you know, for us to review and for us
16:52:34 15 to consider, and for us to perform the level of
16:52:41 16 redaction that Kazim is demanding that we perform, it
16:52:47 17 could take thousands of attorney hours. It could take
16:52:51 18 multiple attorneys months to process through that. And
16:52:56 19 the cost associated with it, is just absurd when there
16:53:01 20 is no basis for it whatsoever. So, as we set forth in
16:53:05 21 our initial opposition brief, the allegations in the
16:53:09 22 complaint concern a period in very late 2021. The
16:53:16 23 discovery requests seek communications from January 1st
16:53:19 24 of 2021 through the date of the complaint. They have
16:53:23 25 already been provided. What the Plaintiff is seeking is

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16:53:29 2 private communications on the individual Defendant's
16:53:32 3 private and personal devices. And the suggestion that
16:53:36 4 he is making right now is that, well, you don't need to
16:53:39 5 have any objections because the protective order will
16:53:43 6 take care of you. And that is not sufficient. And it's
16:53:46 7 borderline offensive. And just to, you know, restate
16:53:51 8 our position is, our position is that they need no
16:53:54 9 further discovery from the individual Defendants to
16:53:58 10 identify any trade secret that is alleged to be
16:54:04 11 contained in the files that are set forth in the
16:54:07 12 complaint. Okay. And now, I, I feel like I'm
16:54:12 13 digressing a little bit, but I just want to make this
16:54:16 14 point. In their papers, they continually address our
16:54:19 15 position as attempting to reargue the Court's prior
16:54:23 16 order. Well, first of all, as your Honor's aware, the
16:54:29 17 Court's order was made without prejudice to renew. So,
16:54:55 18 we have been trying to discuss this with Plaintiff and
16:54:57 19 they just refuse to respond. Because of the fact of the
16:55:00 20 matter is that Plaintiff is required by the FAA to use
16:55:05 21 version control software. Version control software
16:55:10 22 allows Plaintiff to, even if there was a living document
16:55:16 23 that the individual Defendants are alleged to have
16:55:19 24 misappropriated and other Moog employees saved over it
16:55:23 25 in the course of their ordinary course of business,

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version control software allows you to go back in time, allows you to go back and say, okay, so our forensic expert is claiming that on X date, one of the individual Defendants inappropriately downloaded these documents. Now I see that it's been saved over 17 times by other Moog employees throughout the course of the business, but I have version control software, so I can go exactly back to that last version that was accessed on the date at issue. And they can do this to identify the trade secrets in the files that are alleged to be misappropriated in the complaint. So, our position, we're not trying to reargue, we're saying that when the Plaintiff came to this Court and said that it could not perform a trade secret identification because of alleged deletions on devices, that is not responding to the question, because they have version control software. At all times they had version control software. And they can put it to use and identify the trade secrets which my clients are accused of stealing. Okay. It doesn't matter what Moog or, sorry, what Skyryse is accused of stealing, my clients have been accused of stealing certain discrete files, and they have the ability to produce them.

Now, what we haven't heard from Plaintiff is

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16:56:45 2 why is this necessary at this time. They want to look
16:56:49 3 back to 2016. Well, the statute of limitations for any
16:56:55 4 misappropriation to be timely, that would have been
16:56:58 5 March 7 of 2019. So they want to look back three years
16:57:02 6 beyond that and get hundreds of thousands of more
16:57:06 7 documents that wouldn't be relevant for any cause of
16:57:11 8 action. Then, they refuse to show why this information
16:57:17 9 is necessary for this part of the discovery. What we
16:57:23 10 have said to Kazim, and Ms. Andoh through e-mail, but
16:57:28 11 Kazim over the phone, is that this is not necessary
16:57:31 12 right now. There is an immense burden that is going to
16:57:36 13 be associated with the compliance. It could be hundreds
16:57:39 14 of thousands of dollars, thousands of attorney hours and
16:57:43 15 why don't we find some kind of solution. So, if you
16:57:46 16 look through exhibit D, you're going to see my
16:57:50 17 exasperation because I've asked them every question that
16:57:54 18 think I can possibly ask them to help reduce the number
16:57:57 19 of potential documents that we have to consider and
16:58:00 20 resolve this. And I've asked them, have you identified
16:58:03 21 any time where the individual Defendants potentially
16:58:09 22 downloaded Moog information onto their personal devices.
16:58:14 23 That could be immensely beneficial to resolving this
16:58:17 24 dispute. Instead, we get crickets, that is all we get.
16:58:24 25 We get no responses to any of our attempts to bridge

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16:58:28 2 this gap. So, if the Court is inclined to put this
16:58:31 3 burden on the individual Defendants without Plaintiff
16:58:36 4 cooperating in the meet and confer process, without
16:58:39 5 Plaintiff showing any indication of why it's relevant,
16:58:43 6 we have to consider (inaudible), because, at this point,
16:59:13 7 it just seem punitive. And if Plaintiff really wants
16:59:17 8 this information, then they, a billion dollar revenue
16:59:21 9 company, can pay the cost associated for it. All right.
16:59:25 10 We can find a vendor who will charge a cheap price, and
16:59:29 11 they will go and review everything that needs to be done
16:59:33 12 to protect the individual Defendant's rights under the
16:59:37 13 protective order, and they can get all of the
16:59:39 14 information that they are looking for that they have a
16:59:41 15 right to, and we don't have to now staff 10 attorneys,
16:59:45 16 which we don't have, to perform this review. So, that
16:59:51 17 is where we end up on this one.

16:59:52 18 MAGISTRATE JUDGE MCCARTHY: Okay. Let me
16:59:54 19 ask a couple of questions that I was going to ask at
16:59:58 20 some point today anyway, but I might as well ask them
17:00:01 21 now, and that sort of follow up on questions I had asked
17:00:06 22 when we were last together.

17:00:07 23 First of all, are there any, to your
17:00:10 24 knowledge, are there any new developments in the
17:00:12 25 criminal investigation that your clients are aware of?

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17:00:19 2 MR. TRUITT: I don't have information to
17:00:21 3 comment on that right now.

17:00:22 4 MAGISTRATE JUDGE MCCARTHY: So, I mean, I
17:00:23 5 take it if they had been charged criminally, you would
17:00:26 6 be aware of that, right?

17:00:28 7 MR. TRUITT: I would be aware of that, yes,
17:00:31 8 your Honor.

17:00:31 9 MAGISTRATE JUDGE MCCARTHY: And because
17:00:32 10 you're not, I can infer they have not been.

17:00:35 11 MR. TRUITT: They have not been.

17:00:36 12 MAGISTRATE JUDGE MCCARTHY: Doesn't mean
17:00:37 13 anything way or the other for the future. But,
17:00:40 14 secondly, have either of them obtained employment? I
17:00:47 15 think the last time you said they had not.

17:00:51 16 MR. TRUITT: They have not, no.

17:00:53 17 MAGISTRATE JUDGE MCCARTHY: Briefly, Kazim,
17:00:54 18 back to you briefly on this issue, and I'll tell you
17:00:57 19 where I'm at.

17:00:59 20 MR. NAQVI: Very briefly, just two points,
17:01:01 21 your Honor. I think Mr. Truitt talked about a lot of
17:01:04 22 things that are not necessarily relevant to this exact
17:01:13 23 dispute. I want to go back to the March 11th order.
17:01:16 24 The March 11th ordered required the individual
17:01:20 25 Defendants to turn over these devices to the vendor. It

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17:01:26 2 didn't say that only information from a certain period
17:01:29 3 of time will be available. All parties, Defendants,
17:01:32 4 turned over a bunch of devices, and there was never any
17:01:36 5 procedure to limit them to a certain time period. That
17:01:38 6 had just not been a thing in this case. So they turn
17:01:41 7 over the devices and they cannot now try to block Moog
17:01:46 8 from accessing certain portions of those devices. The
17:01:49 9 second thing is burden. Your Honor, there is no burden
17:01:51 10 here. IDS has the image. They already released certain
17:01:55 11 contents of that image to Moog. All they have to do is
17:01:59 12 release the portions of that image from 2016 to present.
17:02:03 13 There is no file-by-file review. We need to make that
17:02:06 14 very clear. This notion of cost shifting and burden and
17:02:09 15 we need to review 500,000 files, and it's going to take
17:02:14 16 tens of thousands of hours, is false. That is not true.
17:02:16 17 That does not need to be happen. IDS has the image and
17:02:20 18 it needs to be released to Moog. That's it. Thank you.

17:02:24 19 MR. TRUITT: Your Honor, may I just address
17:02:26 20 one thing or are we ready to move on?

17:02:28 21 MAGISTRATE JUDGE MCCARTHY: No, go ahead.

17:02:30 22 MR. TRUITT: Okay. So, when the individual
17:02:36 23 Defendants and their prior counsel were dealing with the
17:02:42 24 earlier stipulations in this case, no one had any clue
17:02:45 25 about the immense amount of communications that were on

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17:02:49 2 this device. All right. And while, you know, sometimes
17:02:56 3 I'm going to rephrase my question.

17:02:58 4 While sometimes we view the protective order
17:03:00 5 as if it was written in stone and taken down from a
17:03:04 6 mountain, section 20.1 says that this Court can modify
17:03:09 7 it upon good cause. All right? So, at the same time, I
17:03:14 8 will make the application right now that good cause
17:03:16 9 exists that we can say, hey, let's not look into these
17:03:22 10 communications until we have some sort of reason, some
17:03:26 11 sort of need or some sort of explanation from the
17:03:29 12 Plaintiff, which still isn't there about why it is
17:03:32 13 necessary for this phase of discovery.

17:03:37 14 MAGISTRATE JUDGE MCCARTHY: Mr. Truitt, you
17:03:39 15 said that you had already turned over the information
17:03:44 16 from, I believe, 2020 to date. Is that right?

17:03:48 17 MR. TRUITT: I'll defer to Kazim to correct
17:03:51 18 me if I'm incorrect. I believe we've produced from
17:03:56 19 January 1 of 2021 to the present.

17:03:58 20 MAGISTRATE JUDGE MCCARTHY: 2021, okay. And
17:04:00 21 before doing that, did you do the type of search that
17:04:04 22 you're talking about now as to that information?

17:04:08 23 MR. TRUITT: We performed that search for
17:04:10 24 only attorney/client privilege.

17:04:18 25 MAGISTRATE JUDGE MCCARTHY: Okay. I'm going

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17:04:28 2 to direct, I'm going to modify the time frame that is at
17:04:33 3 issue. I'll take it up to 2019, which is the statute of
17:04:37 4 limitations. So, for 2019, so for years 2019 and 2020,
17:04:43 5 that information should be produced. If you want to do
17:04:47 6 your attorney/client analysis for that, you're free to
17:04:50 7 do so. As far as any privacy analysis or whatever,
17:04:54 8 again, I think that is adequately protected by the
17:04:57 9 protective order. I don't think they have -- I don't
17:05:01 10 think Moog or anybody has any interest in truly private
17:05:05 11 communications. So, I'm going to leave it at that.

17:05:09 12 MR. TRUITT: Your Honor, just to clarify,
17:05:11 13 you're saying March 7th, 2019?

17:05:13 14 MAGISTRATE JUDGE MCCARTHY: Yes, yes, yes.

17:05:15 15 MR. TRUITT: Thank you.

17:05:16 16 MAGISTRATE JUDGE MCCARTHY: Okay. Source
17:05:19 17 code. Back to, I guess, Kazim. Mare you taking this
17:05:26 18 one as well?

17:05:27 19 MR. NAQVI: Yes, your Honor. I'm happy to
17:05:29 20 talk about this. So, you know, your Honor directed the
17:05:33 21 parties to meet and confer, and your Honor provided very
17:05:36 22 helpful guidance at the last hearing that after hearing
17:05:39 23 argument, you know, given the volume of source code in
17:05:42 24 this case, that Moog wouldn't be able to perform an
17:05:47 25 automated source code comparison. So, we met and

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17:05:50 2 conferred with Skyryse. And I won't bore the Court with
17:05:56 3 the histrionics of the meet and confer. Where we
17:05:57 4 ultimately ended up was Skyryse proposed that certain
17:06:01 5 amendments be made to its proposed source code protocol,
17:06:05 6 which would basically entail Moog's expert bringing
17:06:08 7 Moog's source code on an external hard drive and
17:06:14 8 plugging it into a computer that contains Skyryse code
17:06:40 9 and that Skyryse's counsel be permitted to review the
17:06:45 10 file listing on the hard drive that Moog's expert would
17:06:48 11 bring into the review. This would be an in-person
17:06:52 12 review at Lathem's office. We have significant concerns
17:06:55 13 about this proposal for several reasons. Moog actually
17:06:59 14 anticipated this proposal a long time ago when it
17:08:00 15 opposed Skyryse's motion to enter its source code
17:08:05 16 protocol. While we appreciate Skyryse has certain
17:08:09 17 security concerns, I think your Honor can appreciate
17:08:16 18 Moog has substantial security concerns in this case
17:08:19 19 given the voluminous acts of theft and deletion of data
17:08:26 20 that have occurred. Moog is justified in not wanting to
17:08:30 21 connect its source code, which has already been stolen
17:08:34 22 by former Skyryse employees, into a computer that hosts
17:08:38 23 Skyryse code, and of which Moog has no control over and
17:08:42 24 in which an appointed neutral have no control over.
17:08:46 25 This computer that Moog's code would be plugged into

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will automatically maintain information about what's plugged in. And will make copies of the information about Moog's files and folders that were accessed during the review. And Moog is not casting aspersions on Skyryse's counsel. But regardless of what assertions Skyryse's counsel can make, Moog has concerns about its source code being connected to a computer with Skyryse source code. And Moog has no control over that process. A third-party neutral has no control over that process. And this is, your Honor, this is exactly why cases like this, we appoint a neutral so that neither party can have that concern. The neutral is the one who hosts all of these. The neutral is the one that governs the transmission and making the code available. And so the notion that -- another problem we have is that Skyryse's proposal that they be able to review the file listing that Moog brings into the source code review, that is not turning in a review of what is supposed to be Skyryse into an inspection of Moog's source code files. And, again, we don't think that procedure is proper at all.

Another practical issue with Skyryse proposal, is injects an additional delay and burden on all parties. Under its protocol, in-person attendance

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17:29:59 2 at Lathem's offices would be required for this review.

17:30:02 3 Now, you know, Covid is still ramped, there are other

17:30:06 4 illnesses. And, one, it requires experts and personnel

17:30:10 5 to travel in person to Lathem's offices. That is

17:30:13 6 additional delay, additional burden. It compromises the

17:30:17 7 health risk of everyone. The idea of ours is completely

17:30:22 8 virtual. All parties have been using it several months.

17:30:26 9 There have been zero security issues. Skyryse has

17:30:33 10 identified not a single security issues within the IDS

17:30:44 11 environment. That has been absolutely what we've used

17:30:50 12 over the past several months. And I think going back to

17:30:54 13 a threshold issue, your Honor. We already have a

17:30:58 14 protective order. Source code has already been reviewed

17:31:02 15 under that inspection protocol. Skyryse still has not

17:31:11 16 cited a single case where a court has entered two

17:31:24 17 different source code protocols to govern the review of

17:31:28 18 two different types of source code. They haven't cited

17:31:31 19 a single case. And that can't be an accident. And, so,

17:31:34 20 there is no reason to add another level of complexity

17:31:38 21 and burden to a process that is already in place and the

17:31:41 22 parties have already been using it. The experts have

17:31:43 23 already been using it. And there have been no security

17:31:47 24 concerns. So, your Honor, we think that even, you know,

17:31:50 25 under Skyryse's additional proposal, we have substantial

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17:31:54 2 security concerns, and that is why we should go through
17:31:57 3 an appointed neutral that neither party can have these
17:32:01 4 concerns.

17:32:01 5 MAGISTRATE JUDGE MCCARTHY: Okay. Gabe or
17:32:02 6 who is going to take this?

17:32:04 7 MR. GROSS: Thank you, your Honor. I may
17:32:06 8 invite my colleague Joe to participate in this part of
17:32:12 9 the discussion, but I can get it started with the gist
17:32:14 10 of it.

17:32:15 11 First of all, a number of the critiques Mr.
17:32:17 12 Naqvi was making against what he called Skyrise's
17:32:21 13 proposal is not the proposal on the table. It's a
17:32:24 14 proposal that we discussed as we met and conferred.
17:32:27 15 But, we have offered to accommodate with a separate
17:32:30 16 standalone source code review protocol every concern
17:32:34 17 they raised. We all know, and I won't repeat the
17:32:38 18 briefing from either a hearing or two hearings ago and
17:32:41 19 the discussion we had there. The IDS protocol was
17:32:54 20 designed for a different purpose. To deal through a
17:32:58 21 neutral third party forensic vendor with information on
17:33:02 22 where the two side's confidential information may have
17:33:05 23 gotten intermixed. That is not what we're talking
17:33:08 24 about. What we're talking about now is one side or the
17:33:11 25 other's propriety source code, some of its most

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17:33:15 2 sensitive information, one of the most valuable assets
17:33:22 3 of any technology company, which we believe has no
17:33:27 4 reason to be mixed with the other side's source code.
17:33:33 5 So, what we heard from Moog and we heard from your Honor
17:33:37 6 loud and clear last time, is they want the ability and
17:33:40 7 should have the ability to run comparisons in an
17:33:43 8 automated way. So, what we've proposed to do through
17:33:46 9 the standalone protocol that would allow source code to
17:33:50 10 be reviewed and inspected in a secure way was to have
17:33:53 11 the inspecting party, let's use Moog as an example, who
17:33:58 12 is going to inspect the other side's source code, bring
17:34:03 13 in the source code if they want to, on a hard drive that
17:34:08 14 they can plug in to the review computer. We offered to
17:34:12 15 put in software called "Ultra Compare" or something
17:34:15 16 similar, that allows exactly the kind of electronic
17:34:19 17 comparisons that we discussed last time. And as we
17:34:22 18 discussed, and they raised these concerns about, well,
17:34:25 19 we don't know, can't be sure that you won't be reviewing
17:34:28 20 the information we leave on the computer, can't let you
17:34:31 21 look at what source code we're bringing in, we offered
17:34:35 22 to accommodate those concerns. Look, we'll order that
17:34:38 23 the only thing that you can bring in on the external
17:34:41 24 hard drive is the source code, the source code you want
17:34:44 25 to compare, and we won't need to inspect it. We offered

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17:34:47 2 to put in the order a mandate that the party who is
17:34:51 3 hosting the inspection, the party whose source code is
17:34:55 4 being inspected, their counsel cannot look at any
17:35:10 5 forensic data that may be left by the inspecting party
17:35:15 6 on the computer. Can't do it. And we won't. And so we
17:35:19 7 proposed, and it's in front of the court, your Honor, at
17:35:38 8 docket 284-6, a proposed order that accommodates every
17:35:43 9 concern that Mr. Naqvi and Moog have raised. In section
17:35:46 10 4.3 in particular, and I won't bother reading this into
17:35:51 11 the record, but it's subsections (c).

17:35:54 12 MAGISTRATE JUDGE MCCARTHY: Let me just -- I
17:35:56 13 am just turning to it right now. So, I'm sorry, what
17:36:00 14 section did you say?

17:36:01 15 MR. GROSS: It's on page 8, section 4.3, it
17:36:05 16 spans a few pages, bear with me, but I can direct the
17:36:09 17 Court's attention to the appropriate provisions. Page 8
17:36:12 18 at the bottom PDF page 10.

17:36:16 19 MAGISTRATE JUDGE MCCARTHY: All right.
17:36:16 20 Okay. Yes, I found it.

17:36:17 21 MR. GROSS: At section 4.3 (c) which spans
17:36:22 22 to pages there, that is the provision that allows the
17:36:27 23 receiving party, in other words, the party receiving the
17:36:29 24 discovery or taking the inspection. At the end of
17:36:32 25 subsection (c) you'll see that the receiving party's

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representative can bring in an external storage device with its own parties it's own client's code on it and can connect it to the review computer for the purpose of allowing automated comparisons of one side's code against the other. So, we've accommodated that concern.

Your Honor in subsection (e) towards the bottom of page nine, we mention, and this would be, this is what we propose to be an order of the court, we mention about five or six lines from the bottom that tools for performing automated file to file or directory to directory comparison such as "Ultra Compare" may be requested under this paragraph to be loaded on the machine. And, your Honor, that phrase actually has meaning, that file to file or directory to directory comparison it has meaning because that is what Moog told us when they met and conferred, that is what they wanted to do. They weren't ready to get more specific. They said that is the type of comparisons we want to run. And we said this is the type of software and we can have you load up on the machine to let you do it.

If we go to pages 11 and 12, you'll see subsection (j) and in (j) on page 12, about four or five lines from the top of page 12, there is a sentence that begins with the word, "however" and here it says that

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17:38:04 2 "to the extent the source code computer maintains any
17:38:08 3 forensic information regarding the activities of the
17:38:11 4 receiving party's representatives," and those are the
17:38:13 5 people conducting the inspection, "then the producing
17:38:18 6 party and its agents, its counsel and experts shall not
17:38:22 7 review or extract that sort of forensic investigation."
17:38:26 8 We're basically saying you don't need to worry about
17:38:30 9 anyone spying on your inspection, we'll have a court
17:38:33 10 order prohibiting that.

17:38:34 11 So, your Honor, this proposed order, which
17:38:37 12 we offered to Moog and its counsel during the meet and
17:38:40 13 confer, accommodates every concern they've raised. And
17:38:45 14 the reasons we've heard for them rejecting it are that
17:38:49 15 we, in essence, we don't trust you to comply with it.
17:38:54 16 And, your Honor, that is not a basis for turning down a
17:38:57 17 reasonable source code protocol. And, moreover, they
17:39:01 18 haven't explained why the IDS protocol, which is, on its
17:39:06 19 face, designed for a different purpose, should be
17:39:09 20 foisted onto this different type of source code
17:39:12 21 inspection. And, finally, your Honor, there is one very
17:39:15 22 important point that I would be remiss if I didn't make,
17:39:17 23 and it's changed a little bit since the last hearing.
17:39:20 24 We understood when we spoke a couple of weeks ago that
17:39:24 25 Moog was reading the IDS protocol as though it

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17:39:28 2 authorized them to request and receive native electronic
17:39:33 3 files of anything they reviewed under the IDS protocol,
17:39:36 4 which we were very concerned would apply to source code.
17:39:39 5 Source code is just text. And if that were provided in
17:39:42 6 a native electronic format with no protections, anybody
17:39:46 7 could do anything they want with the text file, which
17:39:49 8 could be, you know, published, copied, paste, whatever
17:39:52 9 you want to do, and it wouldn't be locked down in a
17:39:55 10 secure room. And since that hearing, Moog has proposed
17:39:59 11 to us what they call an ESI protocol, a protocol for
17:40:05 12 discovery of electronically stored information. And
17:40:06 13 under their own proposal, it would require the same
17:40:08 14 thing. That Skyryse would have to produce upon request
17:40:12 15 a native file of its source code. That is how they are
17:40:17 16 doing the IDS protocol, and their own view towards ESI.
17:40:21 17 That is not okay for a company's most valuable sensitive
17:40:26 18 source code asset. With the proposal we've offered,
17:40:29 19 offers a secure standalone review of both side's source
17:40:33 20 code, it would protect both sides, both sides would have
17:40:38 21 to operate under it, and it wouldn't allow one side or
17:40:40 22 the other to be able to access native files of the
17:40:43 23 source code and lose all of those secure protections.
17:40:47 24 So, this idea that it would be cumbersome and lead to
17:41:24 25 delay, it's just overblown. And I'm sure you recall to

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17:41:28 2 the briefing before this, we've pointed to the Court to
17:41:33 3 a dozen or so other courts that entered a source code
17:41:37 4 review, just like this, what we offer, it's fully
17:41:42 5 compliant where with other courts have done around the
17:41:45 6 world. And because of the standalone nature, it's more
17:41:49 7 secure than having to give the source code to a third
17:41:52 8 party and having to inject a third party into the mix.

17:41:55 9 So, your Honor, I wanted to make sure I
17:41:57 10 didn't miss anything that my colleague Mr. Lee would
17:41:59 11 like to add to it. But we simply see no reason not to
17:42:04 12 apply the protocol that we've proposed to both sides'
17:42:09 13 source code.

17:42:10 14 MAGISTRATE JUDGE MCCARTHY: What about, I
17:42:13 15 believe I heard Mr. Naqvi say that your proposal would
17:42:17 16 require them to come to your office.

17:42:20 17 MR. GROSS: Right. Your Honor, it's
17:42:22 18 routine. We have offices in all of the same cities, I
17:42:25 19 think. We are in Orange County, LA, San Francisco, New
17:42:29 20 York. Your Honor, we've had our code available in an
17:42:31 21 office for them to inspect for months, and they turned
17:42:35 22 us down. If they would like it in New York, so it's
17:42:39 23 more convenient for Ms. Andoh and her colleagues, we'll
17:42:43 24 send it there. If they want it in New York, we'll set
17:43:10 25 it up there. These are big firms with people scattered

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17:43:14 2 throughout the country all in the same major markets.

17:43:17 3 This is not a big deal.

17:43:19 4 MR. NAQVI: Your Honor, may I just?

17:43:20 5 MAGISTRATE JUDGE MCCARTHY: I'm sorry, Mr.

17:43:23 6 Naqvi, just a minute. I'll get back to you in a minute.

17:43:26 7 So, Gabe, you are, because the other issue

17:43:31 8 that Kazim had raised was this was going to entail

17:43:35 9 further delay and you're saying it's not.

17:43:37 10 MR. GROSS: No, it's not, your Honor.

17:43:38 11 MAGISTRATE JUDGE MCCARTHY: How quickly can
17:43:40 12 this be implemented?

17:43:41 13 MR. GROSS: We're ready to go right now and
17:43:43 14 they've known for months. Our code is sitting on a
17:43:47 15 machine waiting for their review. If they tell us what
17:43:50 16 comparison software they want to use, we'll get it
17:43:53 17 loaded up. And if they tell us what office they want to
17:43:56 18 inspect it in, we'll get it ready to go. This is very
17:44:24 19 similar to the same review i have done for major
17:44:27 20 technology companies that I've done for many, many
17:44:30 21 years. And one of the fortunate realities of this case
17:44:52 22 is we have big law firms with sophisticated counsel and
17:45:16 23 support staff who are experienced in this.

17:45:18 24 MAGISTRATE JUDGE MCCARTHY: Okay. Kazim,
17:45:20 25 back to you.

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17:45:22 2 MR. NAQVI: Yes, so three things. One thing
17:45:25 3 we did not hear Mr. Gross say is why the IDS protocol
17:45:29 4 cannot be used to inspect what Skyryse is characterizing
17:45:33 5 its own independent code. He has not identified a
17:45:37 6 single security issue. And, your Honor, this is
17:45:40 7 important because, again, Skyryse has not cited a single
17:45:43 8 case where a court has entered two different source code
17:45:47 9 protocols under the circumstances here, and that can't
17:45:49 10 be an accident. We have an IDS protocol in place.
17:45:52 11 Source code has been produced by Skyryse and Moog. It's
17:45:56 12 been reviewed. And Skyryse is trying to draw a
17:46:02 13 distinction between code that was potentially mixed with
17:46:27 14 Moog's or its own independent code. That is a
17:46:30 15 distinction without a practical difference, your Honor.
17:46:32 16 And I'll tell you, Moog has produced its own code to, in
17:46:37 17 the IDS environment, and it's been sitting there and
17:46:40 18 it's been likely reviewed by Skyryse. So, the whole
17:46:43 19 notion that there needs to be a separate protocol to
17:46:46 20 govern each party's separate source code is not true
17:46:50 21 because Moog has already produced its individual source
17:46:53 22 code into the IDS environment. And without identifying
17:46:57 23 any actual tangible security concern with the IDS
17:47:02 24 protocol, then there is no reason to go through all of
17:47:05 25 these steps to have another protocol.

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17:47:07 2 And let me address the native source code
17:47:36 3 issue that Mr. Gross raised. We sent them an ESI
17:47:42 4 protocol. The parties have not met and conferred on it.
17:47:45 5 We haven't discussed it. The parties are trying to work
17:47:47 6 out those issues. So, your Honor, I think how source
17:47:50 7 code will be produced or used in this case or submitted
17:47:53 8 to the Court, that is a secondary issue. But, in order
17:47:56 9 for this trade secret identification process to move
17:48:00 10 forward, Moog's expert needs to start comparing the
17:48:03 11 code. So, what we would ask is, as a primary issue, the
17:48:07 12 IDS protocol stays in place. Skyryse makes its separate
17:48:12 13 bucket of code available for review, and Moog's expert
17:48:28 14 begins its review. And until the meet and confer
17:48:31 15 process with Skyryse is resolved, all of Skyryse's code
17:48:35 16 would stay in the IDS virtual environment. None of it
17:48:38 17 will be produced in native format or otherwise until the
17:48:42 18 parties have worked out those issues. There is already
17:48:45 19 a protocol in place. There is no need to inject another
17:48:48 20 protocol. And Moog maintains other objections to
17:49:42 21 Skyryse's proposed source code protocol. For example,
17:49:46 22 the page limit of printing 100 pages of code. I think
17:49:49 23 your Honor can appreciate, we've identified at least
17:49:54 24 43,000 source code files that have been misappropriated
17:49:57 25 at least the. A 100-page limit is completely improper.

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17:50:00 2 We already have procedures to request the production and
17:50:03 3 printing of source code, of materials from the IDS
17:50:07 4 environment. And I don't know, there is just no basis
17:50:10 5 to add a second layer, a second protocol, to govern a
17:50:13 6 separate set of source code when source code has already
17:50:17 7 been produced and it's already been reviewed. And
17:50:20 8 without identifying a tangible security concern, Skyrise
17:50:25 9 has no met its burden to add another protocol.

17:50:58 10 MR. GROSS: Your Honor, if I may. So, look,
17:51:01 11 to the extent, and we've discussed this last time, but I
17:51:03 12 think it's worth reminding everyone that to the extent
17:51:07 13 there is source code on the IDS machines right now,
17:51:11 14 those were produced under the IDS protocol, which, as we
17:51:14 15 know, is governed to control the discovery of materials
17:51:17 16 that may have an intermixing of the party's information
17:51:20 17 on it. That is how information got there. Now, Moog
17:51:23 18 may have chose to help itself and just provide its own
17:51:28 19 source code through that protocol because that is the
17:51:30 20 way it wants it to work, but that is not the order calls
17:51:34 21 for. Now, what we have raised as Skyrise's concerns
17:51:35 22 that we raised with the IDS protocol is, one, we know
17:51:39 23 Moog is interpreting it as requiring the production of
17:51:42 24 native files. They made that request to us on a number
17:51:45 25 of occasions. And, two, Skyrise is not prepared and

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17:51:50 2 this is not to impune IDS by any means, but outside of
17:51:55 3 the purposes and the requirements of the IDS protocol,
17:51:58 4 Skyryse is not prepared to simply put one of its most
17:52:02 5 valuable assets in the hands of a third party,
17:52:05 6 especially when there is no reason to think it contains
17:52:40 7 any Moog information in it. So, Moog has not said it
17:52:44 8 won't be able to do source code comparisons as it wants
17:52:48 9 to under the reasonable proposal Skyryse has offered.
17:52:51 10 We've told Moog, if it encounter an actual page limit
17:52:56 11 problem, we'll solve it. We'll meet and confer and
17:53:00 12 figure it out. Printing source code is like getting
17:53:03 13 ready for a deposition exhibits, if they need 110 pages
17:53:07 14 or 200 pages, we'll work those things out. This is part
17:53:10 15 of a routine part of discovery of source code. But
17:53:55 16 Skyryse's concerns about taking that ill-fitting IDS
17:53:59 17 protocol and sitting it on top of source code review in
17:54:02 18 a different context and trying to make it work are
17:54:05 19 serious and they are legitimate and we've accommodated
17:54:09 20 every concern Moog has made with the protocol Moog has
17:54:15 21 raised at 286-4. Their only push back on that is we
17:54:21 22 don't think we need a second order and we aren't sure we
17:54:25 23 can trust Skyryse and its counsel to comply with it.
17:54:28 24 And I can assure you, your Honor, that of course we
17:54:32 25 will.

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17:54:32 2 MR. NAQVI: Your Honor, may I address two
17:54:35 3 points, and one of them is brief. There is an actual
17:54:38 4 and practical and logistical issue with entering a
17:54:41 5 second protocol. There is not a separate set of people
17:54:44 6 who would be reviewing the two different sets of codes.
17:54:47 7 The problem that presents is an expert will not be able
17:54:51 8 to log on the IDS platform and review what is on the IDS
17:54:55 9 environment, and also do the source code review at
17:55:00 10 Lathem at the same time. They would have to travel back
17:55:03 11 and forth. They would have to do the review at Lathem's
17:55:07 12 office and then look into the IDS and back and forth and
17:55:11 13 back and forth, that creates unnecessary burden and
17:55:16 14 unnecessary delay. It's a mathematician issue.
17:55:58 15 Everything needs to be in one place so the expert can
17:56:01 16 review what Skyryse is claiming is a separate code and
17:56:04 17 code that Skyryse potentially contends contains both.
17:56:09 18 The notion of traveling to an office and then going back
17:56:12 19 to the IDS virtual environment, back and forth, is going
17:56:15 20 to create massive issues for experts on all sides and
17:56:18 21 there are several experts in this case. And so that is
17:56:22 22 an additional logistical problem. And, I just want to
17:56:26 23 close with, we heard Mr. Gross say, Skyryse does not
17:56:31 24 trust IDS to host, but what Skyryse is asking is for
17:56:34 25 Moog to trust Skyryse to allow Moog to plug into Skyryse

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17:56:39 2 computer. How does that make sense? We have a mutual
17:56:42 3 vendor that holds everyone's code as it already has been
17:56:45 4 doing, and that makes the most sense. So, for Skyryse
17:56:49 5 to have a problem with a third party and expect Moog not
17:56:57 6 to have problems with plugging into Skyryse computer, to
17:57:01 7 me, makes no sense at all.

17:57:07 8 MR. GROSS: Well, now just to make sure I
17:57:09 9 was very clear in this. I'm not suggesting, and our
17:57:12 10 proposal doesn't require or even would allow Skyryse to
17:57:15 11 host any source code inspection. This is done by
17:57:18 12 outside counsel only and experts only are allowed and
17:57:22 13 counsel are allowed to access this stuff. Skyryse would
17:57:26 14 not be hosting this inspection, nor would we expect Moog
17:57:35 15 to host its inspections, this is where we trust the
17:58:18 16 outside law firms to do what to they do on a routine
17:58:24 17 basis in technology disputes.

17:58:26 18 MAGISTRATE JUDGE MCCARTHY: Gabe, what about
17:58:28 19 Kazim's argument that this is inefficient because it
17:58:32 20 requires the expert to go to your office and then go
17:58:35 21 back and log onto IDS and can't do it all in one place.

17:58:39 22 MR. GROSS: Yeah, I just disagree, your
17:58:41 23 Honor. Having had to deal with source code reviews in
17:58:45 24 intellectual property disputes for the better part of
17:58:48 25 the last two decades right now, the source code review

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17:58:52 2 itself is virtually always us isolated in a secure
17:59:25 3 location. Other discovery efforts have to take place in
17:59:29 4 other places. Maybe it's at the counsel's office or an
17:59:32 5 expert's office or somewhere else. But source code
17:59:34 6 review is virtually always isolated for security reasons
17:59:38 7 and we're just proposing to do it that way. And, in
17:59:42 8 fact, we've even gone beyond that by allowing the other
17:59:47 9 side's source code to come into that room to facilitate
17:59:50 10 these comparisons. I don't think it's inefficient. I
17:59:54 11 think we're facilitating the other comparisons that Moog
17:59:58 12 says it wants and speed things up. There is, by design,
18:00:01 13 a separation between source code and other inspection of
18:00:06 14 other. I don't find that in inefficient and it secures
18:00:10 15 security.

18:00:11 16 MAGISTRATE JUDGE MCCARTHY: Counsel, I heard
18:00:12 17 your positions today, and I've heard them when we were
18:00:15 18 last together on October 20th. And I'll tell you in the
18:00:19 19 interest full disclosure, that you collectively have
18:00:23 20 exhausted my expertise in source code inspection
18:00:27 21 methodology. I will just tell you this. That as I sit
18:00:32 22 here today, I don't see a great harm in adopting
18:00:38 23 Skyryse's source code proposal. I recognize it's not --
18:00:43 24 it's a different protocol, but I am interested first and
18:00:49 25 foremost, and I think everybody is interested first and

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18:00:52 2 foremost in getting this trade secret identification
18:00:56 3 completed in the quickest and most efficient manner
18:00:59 4 possible. And I -- it strikes me that the proposal made
18:01:05 5 by Skyryse is a reasonable proposal that best
18:01:10 6 accommodates everyone's interest. However, if issues
18:01:14 7 should arise, such as page limitations on copying, et
18:01:19 8 cetera, et cetera, Mr. Gross, I take you at your word
18:01:22 9 that you will meet and confer and work through those
18:01:27 10 issues, otherwise we may have to revisit it. And I'll
18:01:31 11 just say to you, beyond that, if somebody wants to take
18:01:35 12 my decision up to Judge Vilardo, God bless you. He, I
18:01:40 13 don't think, he'll take a different view. He may, but
18:01:43 14 it would seem to me that the next step, because, as I
18:01:46 15 indicated, I think you've -- I'm at the limit of my
18:01:51 16 understanding of this technology, then the next step, if
18:01:55 17 necessary, and hopefully not, would be for me to appoint
18:01:59 18 a special master to just coordinate that entire process,
18:02:04 19 which would lead to additional expense and delay, but I
18:02:07 20 hope it doesn't come to that. So, those are going to be
18:02:11 21 my rulings. We do have the motion for clarification,
18:02:17 22 docket No. 283, that was filed on November 7th. Today
18:02:24 23 is November 10th. There has been no briefing schedule.
18:02:28 24 I'm willing to set it. I've only skimmed that motion.
18:02:34 25 I have not reviewed it in great detail, but I'll just

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18:02:37 2 say that, unless there is a real compelling need to get
18:02:44 3 into third-party discovery, I think we should be
18:02:48 4 focusing on what we already have and nailing that down.
18:02:52 5 But, I'm not saying no, I'm not saying yes. We'll take
18:02:56 6 that up on another date.

18:03:00 7 What do the parties propose as to a briefing
18:03:03 8 schedule on that? Because the other thing, I recognize
18:03:06 9 a lot of the people to whom subpoenas have been
18:03:09 10 addressed are, I guess, Skyryse employees. So, Mr.
18:03:14 11 Gross, would your office be representing them on this or
18:03:18 12 because --

18:03:18 13 MR. GROSS: Your Honor, we are representing
18:03:21 14 many of those witnesses. There may be some on the
18:03:25 15 edges. There is a handful that we are not representing.
18:03:28 16 But we certainly are representing many of them.

18:03:30 17 MAGISTRATE JUDGE MCCARTHY: And then there
18:03:31 18 was another company mentioned, right?

18:03:33 19 MS. ANDOH: Hummingbird, your Honor, that
18:03:36 20 would be the other company.

18:03:37 21 MAGISTRATE JUDGE MCCARTHY: So they are
18:03:38 22 going to have to be heard, I take it.

18:03:40 23 MS. ANDOH: Your Honor, I actually would
18:03:42 24 argue, no, they don't, because this isn't a motion by
18:03:45 25 them to quash or modify, it's a motion by us to compel

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18:03:48 2 compliance with any --

18:03:49 3 MAGISTRATE JUDGE MCCARTHY: But they've

18:03:50 4 lodged objections, right?

18:03:52 5 MS. ANDOH: Well, the objections -- your

18:03:55 6 Honor, the objection that they've lodged is that their

18:03:57 7 interpretation of your Honor's order does not require

18:03:59 8 them to comply with the subpoena right now. So, the

18:04:03 9 only issue that we're seeking to discuss with the Court

18:04:06 10 is a clarification as to whether or not third party

18:04:08 11 subpoenas can be implicated as part of this. And I will

18:04:12 12 -- I will say, I mean the only, the only reason why

18:04:15 13 these subpoenas got served on the Skyryse employees to

18:04:19 14 begin with is because -- it's because Skyryse took the

18:04:24 15 position that even if their employees used their

18:04:27 16 personal devices for work purposes, that they would not

18:04:31 17 take responsibility for producing them as part of party

18:04:34 18 discovery. And we moved -- we actually made a motion on

18:04:37 19 that. And as a compromised position, instead of your

18:04:42 20 Honor ruling on it, your Honor instead said go serve

18:04:45 21 subpoenas on them. But these Skyryse employees that we

18:05:18 22 served subpoenas on, this is not a standard third party

18:05:21 23 situation, this is a situation where we were trying to

18:05:51 24 get access to Skyryse material for their work for

18:05:54 25 Skyryse that was sitting on their devices.

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18:05:56 2 MAGISTRATE JUDGE MCCARTHY: How about the
18:05:57 3 other company, Hummingbird.

18:05:59 4 MS. ANDOH: So, Hummingbird is a slightly
18:06:01 5 different issue, your Honor, but they actually have not
18:06:04 6 objected or responded. We included it in the motion for
18:06:08 7 full disclosure so you knew we went ahead and served
18:06:11 8 them. There are two former Skyryse employees, we
18:06:14 9 haven't received official confirmation of this, but my
18:06:18 10 impression is that -- well, I shouldn't presume. There
18:06:21 11 are two Skyryse employees, Mr. Baptist and Mr. Achar who
18:06:26 12 have retained separate counsel that are not being
18:06:29 13 represented by Lathem who received subpoenas who are
18:06:33 14 objecting on this basis. There are other people that we
18:06:37 15 have served that have not objected with separate
18:06:40 16 counsel. And as we understand, last we heard the
18:06:42 17 employees that Lathem was representing, were going to be
18:06:46 18 producing materials. We haven't received them yet for
18:06:50 19 everybody. We think we've received two productions so
18:06:53 20 far. It may be with respect to the Lathem employees,
18:06:55 21 the Lathem represented employees, there may not be this
18:07:00 22 continuing issue, it's just not clear. But we already
18:07:03 23 reached an impasse with counsel for Mr. Baptist and Mr.
18:07:08 24 Achar, irrespective whether or not the Lathem
18:07:11 25 representatives produce this issue, we still have the

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18:07:15 2 problem with the interpretation of your Honor's order.

18:07:17 3 MAGISTRATE JUDGE MCCARTHY: So, they will
18:07:18 4 need to be heard on this, right?

18:07:20 5 MS. ANDOH: Your Honor, I guess, your Honor,
18:07:22 6 my point on this would be, I don't understand how they
18:07:25 7 would have standing. Because this order only applies to
18:07:29 8 this case. They are not parties to this case. If they
18:07:32 9 want --

18:07:32 10 MAGISTRATE JUDGE MCCARTHY: No, but --

18:07:33 11 MS. ANDOH: If they want to quash or modify.

18:07:35 12 MAGISTRATE JUDGE MCCARTHY: Yeah. Well, no.
18:07:37 13 I haven't seen their responses. Maybe it's in your
18:07:41 14 papers. As I said, I have not drilled down on that
18:07:45 15 motion because I had enough else to focus on for today.
18:07:49 16 But, if they are, I agree with you that they don't have
18:07:55 17 standing to say that you can or cannot do this. But
18:07:59 18 they do have standing to object to the subpoenas or
18:08:05 19 their merits. And then I presume the next step would be
18:08:08 20 you bring a motion to compel and they are entitled to be
18:08:12 21 heard on that or they bring a motion to quash or
18:08:16 22 whatever. So, at some point, they are going to be heard
18:08:19 23 on some aspect of this, right?

18:08:21 24 MS. ANDOH: Unless they decide they are
18:08:23 25 going to withdraw their objections. Again, right now

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18:08:25 2 the only objection of theirs that we're dealing with is
18:08:29 3 this concept that there is a stay of discovery such that
18:08:32 4 they don't need to comply because of your Honor's order.
18:08:34 5 That is the only issue that is before your Honor at the
18:08:37 6 moment. We've intentionally not taken up the rest of
18:08:40 7 those objections because we don't think this is the
18:08:43 8 proper forum to do that.

18:08:45 9 MAGISTRATE JUDGE MCCARTHY: Mr. Gross,
18:08:45 10 anything you want to say?

18:08:46 11 MR. GROSS: I do.

18:08:47 12 MAGISTRATE JUDGE MCCARTHY: Let me, Mr.
18:08:49 13 Gross or Mr. Green or Mr. Truitt, I mean this impacts
18:08:53 14 all of you, I guess, in one way or another.

18:08:56 15 MR. GROSS: I appreciate that, your Honor.
18:08:57 16 I'm actually, I'm going to turn it over to my colleague
18:09:02 17 Mr. Zahoory, who has been working closely with the third
18:09:06 18 parties to respond. Before I do that, the motion, in
18:09:09 19 our view, isn't ripe. It is premature. We let, on
18:09:14 20 behalf the third parties we represent, we let counsel
18:09:17 21 know that they would be providing documents in response
18:09:19 22 to the subpoena and the motion came in any way. Let me
18:09:22 23 have Mr. Zahoory flesh out the positions at this stage,
18:09:27 24 and we, of course, reserve our right to oppose the
18:09:30 25 motion if the full briefing goes forward.

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18:09:32 2 MAGISTRATE JUDGE MCCARTHY: Okay. But so
18:09:33 3 everybody understands, first of all, this is a motion
18:09:37 4 for clarification. Nobody has formally responded.
18:09:42 5 While we're all together, I guess, I'll hear briefly
18:09:44 6 from you. But if the question is is Moog allowed to
18:09:55 7 serve third-party subpoenas in order to identify the
18:10:01 8 trade secrets that it claims to have been
18:10:04 9 misappropriated, I guess my answer to that, and I think
18:10:09 10 I alluded to that at our last conference, would be yes.
18:10:13 11 But I am concerned that we not end up going down a whole
18:10:18 12 different series of alleyways on this because, at some
18:10:24 13 point, we have to bring the curtain down on
18:10:26 14 identification trade secrets with the caveat that, as
18:10:32 15 we've said from the get go, at some point you identify
18:10:38 16 the trade secrets that you claim to have been
18:10:40 17 misappropriated. If, thereafter, you find that there
18:10:44 18 are other trade secrets, you can identify those for, you
18:10:47 19 know, on a showing of good cause, which I think would
18:10:50 20 be, you know, Judge Vilardo or I would be relatively
18:10:56 21 open to. But, we're now, and it's not anybody's fault,
18:11:00 22 but it is what it is. This action was commenced in
18:11:03 23 March, I believe, and we're now in November, and we have
18:11:08 24 no preliminary injunction hearing scheduled. I guess it
18:11:14 25 remains an open issue of whether that hearing will be

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18:11:17 2 here or in California. But, we just, at some point, we
18:11:23 3 got to say, okay, enough, and now identify. And if you
18:11:26 4 need to identify more stuff later, then okay. But, do
18:11:31 5 you understand where I'm coming from?

18:11:33 6 MR. GROSS: We do, your Honor. If I may ask
18:11:36 7 Mr. Zahoory to just make a few statements on this
18:11:39 8 position.

18:11:40 9 MAGISTRATE JUDGE MCCARTHY: Well, before I
18:11:41 10 do, I guess back to Ms. Andoh. I mean, I'm not saying
18:11:45 11 you can't, and I didn't last time. I just, I'm
18:11:51 12 concerned that we not go off in all different kinds of
18:11:55 13 different directions, which is going to delay this
18:11:59 14 indefinitely without there being any identification.

18:12:02 15 MS. ANDOH: Your Honor, no one is more
18:12:03 16 frustrated than Moog is that this process is taking so
18:12:06 17 long. The problem that we simply have, and we heard a
18:12:10 18 lot of it in this hearing, is that our information has
18:12:12 19 now passed through, that we're aware of, a large number
18:12:16 20 of hands of employees that are associated with Skyrise.
18:12:19 21 And, so, we're just doing the best we can to track that
18:12:22 22 down so that, in our trade secret identification, we can
18:12:25 23 identify what has been used, and we have the fullest
18:12:29 24 scope of information available to us, because, as your
18:12:31 25 Honor pointed out, for purposes of the preliminary

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18:12:33 2 injunction, we need to be able to demonstrate, right,
18:12:35 3 the likelihood on the merits with respect to any of the
18:12:38 4 trade secrets that we're going to present at the
18:12:41 5 preliminary injunction. And that likelihood of success
18:13:03 6 on the merits requires us to provide evidence of use.
18:13:09 7 We're not trying to go down rabbit holes. This is us
18:13:12 8 trying to comply with the suggestion that instead of
18:13:15 9 fighting with Skyryse over whether Skyryse was obligated
18:13:18 10 to collect its own company information off of its
18:13:23 11 employees' personal devices, that we take the route of
18:13:26 12 serving them. And I point out from what Mr. Gross said
18:13:31 13 previously, I understand that the Lathem represented
18:13:33 14 employees are representing the third-party employees are
18:13:36 15 going to provide documents with respect to the
18:13:38 16 third-party subpoenas. And if they do that, that is
18:13:40 17 great. And as I mentioned before, there are two
18:13:42 18 additional subpoena recipients who are Skyryse
18:14:34 19 employees, Mr. Achar and Mr. Baptist, who is represented
18:14:38 20 by two separate counsel, that are not Lathem and
18:14:42 21 Watkins, who we met and confer, and they refuse to move
18:14:46 22 off their position.

18:14:47 23 MAGISTRATE JUDGE MCCARTHY: Okay. Let me
18:14:48 24 say this. I don't think I need to hear from Mr. Zahoory
18:14:52 25 on this. If the issue is, irrespective of the merits of

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18:14:55 2 the subpoena, if the issue is whether Moog is allowed to
18:15:00 3 serve these third-party subpoenas to the extent that
18:15:06 4 they are directed at identifying trade secrets which
18:15:11 5 have been misappropriated, I will clarify that, yes,
18:15:14 6 they are allowed to do that. But, as to any particular
18:15:18 7 objection to any subpoena, whether it's relevant,
18:15:21 8 whether it's burdensome, anything of that sort,
18:15:26 9 obviously I can't speak to that right now. So, you can
18:15:29 10 tell the other attorneys who are representing these
18:15:33 11 other parties that, no, I am not prohibiting you from
18:15:38 12 serving the subpoenas nor am I saying the subpoenas are
18:15:42 13 proper or anything of that sort, that would have to be
18:15:47 14 taken up at a later date. Okay?

18:15:50 15 MS. ANDOH: Your Honor, that is literally
18:15:51 16 the only relief that we were seeking by way of that
18:15:54 17 motion was that specific clarification. So, from our
18:15:58 18 perspective, we can take this transcript and use that,
18:16:01 19 and we don't have to worry about doing a full briefing.

18:16:04 20 MAGISTRATE JUDGE MCCARTHY: Okay. But,
18:16:05 21 again, everybody reserves their right to say as to any
18:16:09 22 particular subpoena, this is not relevant, this is too
18:16:12 23 burdensome, this is not directed at identifying trade
18:16:16 24 secrets, whatever. I'll decide all of those issues, if
18:16:19 25 I need to, down the road. But, to clarify, I've

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18:16:24 2 clarified. Okay.

18:16:26 3 MS. ANDOH: Thank you, your Honor.

18:16:26 4 MR. GROSS: Thank you, your Honor. Could I
18:16:28 5 ask just for clarity on the record, would you please ask
18:16:31 6 Moog's counsel then if they withdraw the motion so we
18:16:34 7 know it's not something that is owed an opposition or
18:16:37 8 response?

18:16:37 9 MAGISTRATE JUDGE MCCARTHY: They don't have
18:16:38 10 to withdraw the motion, I just ruled on the motion.
18:16:42 11 I've clarified that they are allowed to serve the
18:16:46 12 subpoenas.

18:16:47 13 MR. GROSS: I appreciate that, your Honor.
18:16:48 14 We heard that clarification last time, too. It does
18:16:51 15 request different relief. It asks for a ruling on the
18:16:54 16 relevance of the subpoenas. It gets to the merits a
18:16:57 17 little bit, and that is still outstanding.

18:16:59 18 MAGISTRATE JUDGE MCCARTHY: Okay. That is
18:17:00 19 what I'm not going to do today. And I said, I'm aware
18:17:06 20 that the motion has been filed, and I hadn't studied it
18:17:11 21 and I skimmed it. And Ms. Andoh just told me that is
18:17:15 22 the only clarification she was asking for in the motion.
18:17:18 23 And if that is the only clarification, then fine. And
18:17:23 24 we'll take up everything else at a later date. I mean,
18:17:26 25 I can do a text order that specifies that.

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18:17:29 2 MS. ANDOH: That would be very helpful, your
18:17:31 3 Honor.

18:17:31 4 MAGISTRATE JUDGE MCCARTHY: Okay. All
18:17:32 5 right.

18:17:34 6 MR. TRUITT: And, sorry, just to clarify, no
18:17:37 7 response to required right now to that motion.

18:17:42 8 MAGISTRATE JUDGE MCCARTHY: Not only is no
18:17:44 9 response required, I wouldn't --

18:17:47 10 MR. TRUITT: Not permitted either.

18:17:49 11 MAGISTRATE JUDGE MCCARTHY: No, it would be
18:17:50 12 permitted, but I think with what I just said, that is
18:17:53 13 the only issue I'm clarifying. And any issue as to any
18:17:56 14 particular subpoena, the propriety of it is deferred
18:18:02 15 into a later date. Okay?

18:18:03 16 MR. TRUITT: Okay, thank you.

18:18:04 17 MAGISTRATE JUDGE MCCARTHY: Are we all good
18:18:05 18 on that then?

18:18:07 19 MS. ANDOH: We are, your Honor.

18:18:08 20 MAGISTRATE JUDGE MCCARTHY: Now, my, you
18:18:15 21 know, everything I say, every conference we have is on
18:18:18 22 the record, so I appreciate that because it helps us all
18:18:23 23 remember what we said. But I'm not going to issue any
18:18:28 24 formal ruling beyond the bench rulings that I've made
18:18:32 25 today other than for the benefit of non parties, I will

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18:18:36 2 issue a text order on the motion for clarification. But
18:18:43 3 other than that, my rulings will stand as I've indicated
18:18:46 4 today. Okay.

18:18:48 5 Now, you're next going to be seeing Judge
18:18:51 6 Vilardo, I think. But, just in terms of moving things
18:18:55 7 along with me, if he says we're still going to be here,
18:19:02 8 I'll leave it open to the parties as to what you next
18:19:05 9 want to propose. If you want to propose that we set
18:19:10 10 another conference now, I can do that, or, if you just
18:19:14 11 want to wait and see what transpires, vis-à-vis the
18:19:18 12 subpoenas, I can wait until I'm called onto rule on
18:19:22 13 something.

18:19:22 14 MR. GROSS: Your Honor, while we were in
18:19:24 15 this hearing, I saw that Judge Vilardo's Chambers did
18:19:35 16 set a date for the hearing, which I believe is on the
18:19:37 17 29th, which is on the motion about jurisdiction and
18:19:40 18 venue, so, in light of that, our suggestion would be
18:19:46 19 that we reconvene about a status conference after that
18:19:50 20 hearing when we might have some more guidance or
18:19:53 21 direction as to where the case is heading.

18:19:54 22 MAGISTRATE JUDGE MCCARTHY: Why don't I give
18:19:56 23 you a date right now? Is that okay?

18:19:58 24 MR. GROSS: Certainly.

18:20:01 25 MAGISTRATE JUDGE MCCARTHY: Bear with me a

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18:20:02 2 minute. So 29th, I don't know if he is going to rule at
18:20:09 3 that time or defer, but, in any event, let me just give
18:20:16 4 you a date. My problem with my calendar, it logs me off
18:20:27 5 automatically, and I have to log back in. Your meeting
18:20:32 6 with him on the 29th, so how about I would say Pearl
18:20:39 7 Harbor day, but let's not do that. How about Thursday,
18:20:43 8 December 8th, that gives folks enough time to digest
18:20:48 9 whatever has happened in the meanwhile. Is that good?

18:20:55 10 MR. GROSS: That works for Skyryse, your
18:20:57 11 Honor.

18:20:57 12 MS. ANDOH: That works for Plaintiff.

18:20:59 13 MR. TRUITT: Works for the individual
18:21:00 14 Defendants as well.

18:21:01 15 MAGISTRATE JUDGE MCCARTHY: Okay. Why don't
18:21:02 16 we say -- wait a second. Just having said that, I have
18:21:09 17 a 4 o'clock conference. Can we start ours at 2 o'clock
18:21:16 18 Eastern time.

18:21:19 19 MS. ANDOH: For Plaintiff, that works.

18:21:20 20 MR. GROSS: We're good.

18:21:22 21 MR. TRUITT: Yes.

18:21:22 22 MAGISTRATE JUDGE MCCARTHY: That would be 11
18:21:23 23 o'clock for Mr. Gross and whoever is out on the coast.

18:21:28 24 MR. GROSS: Sure thing, your Honor.

18:21:30 25 MAGISTRATE JUDGE MCCARTHY: Okay. All

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18:21:32 2 right. And, again, obviously, if Judge Vilardo would
18:21:38 3 send this case elsewhere in the interim, I'll take it
18:21:41 4 out. But I have no indication from him one way or the
18:21:46 5 other what he plans to do.

18:21:49 6 So, all right, folks, I do appreciate that
18:21:53 7 you disagree on issues, but you've done a good job on
18:21:57 8 working through a lot of issues with each other and I
18:22:02 9 encourage you to continue doing so. So, thank you all.

18:22:07 10 MR. GROSS: All right. Thank you, your
18:22:08 11 Honor.

18:22:08 12 MS. ANDOH: Thank you, your Honor.

18:22:09 13 MR. TRUITT: Thank you, your Honor.

18:22:11 14 MAGISTRATE JUDGE MCCARTHY: Take care.

15 * * *

16 CERTIFICATE OF REPORTER

17
18 I certify that the foregoing is a correct transcript
19 of the record to the best of my ability of proceedings
20 transcribed from the audio in the above-entitled matter.

21
22 S/ Karen J. Clark, RPR

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